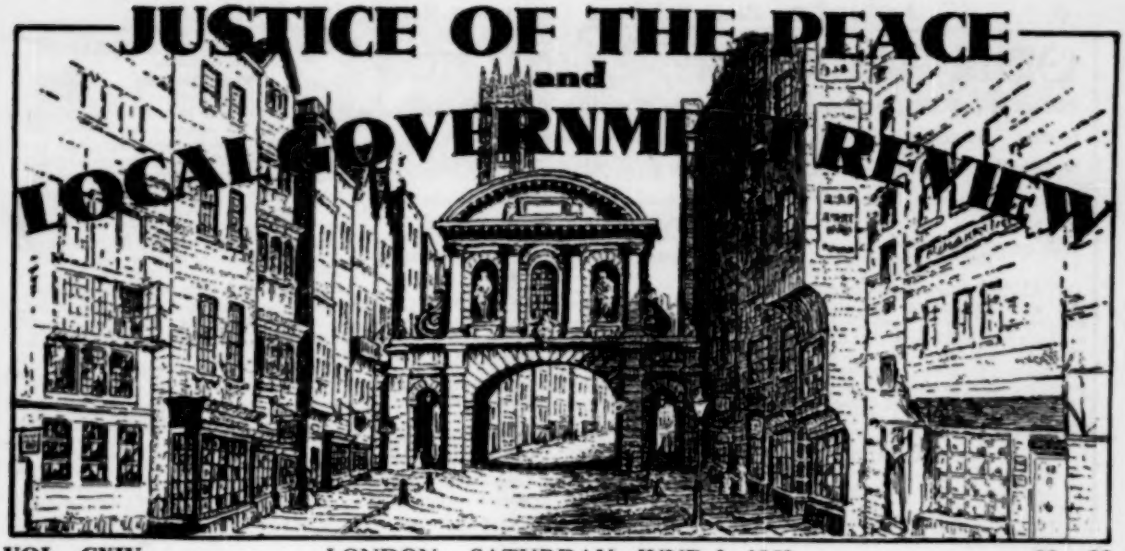

VOL. CXIV. LONDON: SATURDAY, JUNE 3, 1950. No. 22

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REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

BOROUGH OF MAIDSTONE

Deputy Town Clerk

APPLICATIONS are invited from Solicitors with local government experience for the appointment of Deputy Town Clerk at a salary of £750 a year, rising by annual increments of £50 to £1,000 a year (Grades IX and X).

A house is available for purchase at a price controlled under a building licence.

Applications, with the names of three referees, should be received not later than Wednesday, June 14, 1950.

GRAHAM WILSON,
Town Clerk.

13, Tonbridge Road,
Maidstone.

BOROUGH OF KETTTERING

Appointment of Assistant Solicitor

APPLICATIONS are invited for the permanent post of assistant solicitor in the Town Clerk's Department at a commencing salary in accordance with Grade IV of the Administrative, Professional and Technical Division of the National Scale of Salaries, *viz.*, £480 per annum, rising, subject to satisfactory service, by annual increments of £15 per annum to £525 per annum.

Applications, on forms to be obtained from the undersigned, should be submitted not later than June 20, 1950.

D. DUNSFORD PRICE,
Town Clerk.

Town Clerk's Office,
Kettering.

BOROUGH OF GRAVESEND

Appointment of Deputy Town Clerk

APPLICATIONS are invited for the above appointment from Solicitors with experience in conveyancing, advocacy and local government law and administration. The salary will be in accordance with Grade A.P.T. X of the National Scale of Salaries, namely, £850 per annum rising by annual increments of £50 to £1,000 per annum.

The person appointed will not be permitted to engage in private practice. The appointment will be subject to one month's notice on either side, to the provisions of the Local Government Superannuation Act, 1937, and the National Scheme of Conditions of Service as adopted by the Council. The successful applicant will be required to pass a medical examination.

Canvassing will disqualify and relationship to any member or officer of the Council must be disclosed.

Applications stating age, qualifications and experience, accompanied by copies of three recent testimonials, should reach the undersigned not later than Saturday, June 17, 1950.

F. W. HARRISON,
Town Clerk.

4, Woodville Terrace,
Gravesend.

COUNTY OF WEST SUSSEX

Appointment of Full-Time Female Probation Officer

THE West Sussex Combined Probation Committee invite applications for the appointment of a full-time female Probation Officer.

The appointment will be subject to the Probation Rules, 1949, and the Probation Officers' (Superannuation) Order, 1948, and the salary will be in accordance with the prescribed scale.

Applications must be received by the undersigned not later than Saturday, June 17, 1950.

T. C. HAYWARD,
Secretary to the Probation Committee.

County Hall,
Chichester.

COUNTY OF NORTHAMPTON

Senior Assistant Solicitor

APPLICATIONS are invited for the above-named appointment in my office at a salary of £750 rising by annual increments of £50 to £900 per annum. A weekly sum of 25*s.* by way of temporary additional salary is payable, subject to review quarterly, to a married officer unable to find a house locally.

Applicants must be skilled in conveyancing and advocacy, and local government experience will be an advantage.

The appointment will be subject to the Conditions of Service of the National Scheme for Local Government Officers and to the provisions of the Local Government Superannuation Act, 1937. The successful candidate will be required to pass a medical examination and his appointment will be terminable by two calendar months' notice on either side.

Applications, for which no form is issued, stating age, education, war service, qualifications and experience, together with the names of two referees, must reach the undersigned not later than June 17, 1950.

J. ALAN TURNER,
Clerk of the County Council.

County Hall,
Northampton.

COUNTY BOROUGH OF WEST BROMWICH

Common Law and Conveyancing Clerk

APPLICATIONS are invited for the post of Common Law and Conveyancing Clerk in the Legal Section of the Town Clerk's Department. Salary in accordance with A.P.T. Grade III (£450—£495).

Applicants should give details of age, experience and the names of two referees, and should be received not later than June 16, 1950.

The post is superannuable, subject to the National Conditions of Service and to one month's notice on either side.

J. M. DAY,
Town Clerk.

Town Hall,
West Bromwich.

COUNTY COUNCILS ASSOCIATION

Deputy Secretary

APPLICATIONS are invited for the above full-time post, for which local government knowledge in all its branches and legal experience are essential, at a salary to be fixed at between £1,500 and £1,800 a year according to qualifications and experience. The Local Government Superannuation Act, 1937, will apply to the appointment, which will begin on October 1, 1950, and will be terminable by three months' notice on either side. Applications, of which five copies must be provided, must be made on a form to be obtained from the undersigned and must be received at the Association's offices, 84, Eccleston Square, Westminster, S.W.1., not later than June 26, 1950.

S. M. JOHNSON,
Secretary.

CITY OF LEEDS

Principal Probation Officer

APPLICATIONS are invited for the above appointment at a salary of £625 rising by £20 a year to £725. In the event of an applicant being appointed who is at present a principal, a deputy or an assistant principal, the commencing salary will be fixed, within the above scale, at the figure nearest to his present salary.

The appointment will be subject to the Probation Rules, 1949.

The successful candidate will be required to pass a medical examination.

Applications (endorsed Principal Probation Officer) stating age, qualifications and experience, together with copies of two recent testimonials, should reach the undersigned not later than Friday, June 16, 1950.

T. C. FEAKES,
Secretary to the Probation Committee.

Justices' Clerk's Office,
The Town Hall,
Leeds, 1.

CITY OF LEEDS

Appointment of Full-Time Male Probation Officer

APPLICATIONS are invited for the above appointment.

Applicants must be not less than 23 nor more than 40 years of age except in the case of a serving full-time Probation Officer. The appointment will be subject to the Probation Rules, 1949, and the salary will be in accordance with such rules and subject to superannuation deductions.

The successful candidate will be required to pass a medical examination.

Applications stating age and qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned not later than Friday, June 16, 1950.

T. C. FEAKES,
Secretary to the Probation Committee.

The Town Hall,
Leeds, 1.

LECTURES

GRESHAM College, Basinghall Street, London, E.C.2. Four Lectures on "Making a Contract" by Eric Sachs, Esq., K.C. Monday to Thursday, June 5 to 8. The Lectures are Free and begin at 5.30 p.m.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Hearing a Case in the Defendant's Absence

Magistrates are often having to decide whether to hear a case in the absence of a defendant who has been properly served with a summons requiring his attendance. In a recent appeal which came before a Divisional Court from a decision of justices in a matrimonial case, the High Court emphasized how important it is that parties should have an opportunity of being heard. In the case in question the High Court held that the justices were not to be criticized for hearing the wife in the husband's absence. There had been an adjournment at his request and then two days before the adjourned hearing he wrote asking for a further adjournment on the ground of his public engagements. A telegram was sent refusing his application.

The husband applied to the High Court for a rehearing of the case. He said that he had not received the telegram and that he wished to defend the proceedings. The High Court granted the rehearing, stating that the court had no right to shut the husband out from his defence, even though his present position was entirely brought about by his own fault.

Extending an Order after its Expiry

In *Norman* v. *Norman* [1950] 1 All E.R. 1082, W.N. 230, the decision of the stipendiary magistrate at East Ham in a case brought under s. 2 (2) of the Married Women's (Maintenance) Act, 1949, was reversed. The point is one of great importance on which opinions have differed since this Act came into force on December 16, 1949. Section 2 (2) allows a married woman who has an order under the Summary Jurisdiction (Separation and Maintenance) Acts making provision for the maintenance of a child, to apply to have the payments continued beyond the time when the child becomes sixteen years of age on the ground that the child is or will be engaged in a course of education or training after that age.

The learned magistrate held that this provision could not be invoked in favour of a child who had attained the age of sixteen on December 15 on the ground that the order for the child's maintenance had ceased on December 15 and could not, therefore, be continued.

Both Hodson, J., and Pearce, J., took the view, however, that the intention of the statute must be taken to be to remedy the mischief, or to fill the gap in the scheme of things in connexion with the maintenance and education of children which existed at its passing, and that to take the strictly grammatical view of the language of the section which the magistrate had taken would make it impossible to make sense of it at all. Hodson, J., said that what is contemplated is a child who has attained the age of sixteen years already so that necessarily the order must in his case have ceased. He agreed that the wording of the subsection is a little puzzling, but the construction which the wife put forward is the right one. The case was sent back to the magistrate for consideration on the merits.

A Training Scheme for Magistrates

The Magistrates' Association has prepared a pamphlet setting forth its views on the scope of a training scheme envisaged by s. 17 of the Justices of the Peace Act, 1949. First is set out what the association believes any such scheme should be designed to achieve, and then follow suggestions as to how lectures should be arranged and what other training is advisable. This is amplified by a suggested course of six lectures, of suitable visits to be paid to fit in with the lectures, and by a list of books which justices may find helpful. This is a long list, and it is unlikely that many justices will have the time, even if they have the inclination, to read more than a small selection from this list. The pamphlet ends with a similar programme related especially to juvenile courts. It is published at a price of 1s. and is prepared with the consent of the Lord Chancellor.

Probation in the County Isle of Ely

The probation report for 1949 from the County Isle of Ely combined area has just reached us, and it states at the beginning that in addition to giving the usual annual statistics it deals with such questions as the extent and effect of the use of probation in the area, the effect of the Criminal Justice Act, 1948, on the working of probation, and the developments during the year in the local organization of probation work. Fewer offenders were brought before the courts during 1949 than in the preceding year, but more probation orders were made. The increase was in the case of adult offenders, and was from eighteen to twenty-nine. Moreover more persons were supervised by Isle probation officers. The need for careful and full inquiry into cases before probation is decided upon is emphasized. Figures giving percentages of successful cases appear to relate to those who completed their probation during the year. This may be rather a short period in which to judge the permanent effect of probation in those cases. The importance of the " preventive " side of the probation officer's work in matrimonial conciliation, in helping parents with children who are beyond control, and in supervising truancy cases is stressed.

It is suggested that the effects of the Criminal Justice Act, 1948, are not very considerable, and tend to increase the courts' powers and to widen the use of remedial as opposed to purely punitive methods of dealing with crime.

During the year there have been certain staff changes and two new reporting centres were opened, one of which was later closed. The extent of a probation officer's journeys in the course of his

duty is shown by the fact that the male officer's official mileage during the year was 11,778. A probationers' camp was run with considerable success. The probation officer has received help in his work from the local Rotary club.

We are glad to receive these reports and to be able to publish certain details from them. Probation work well and successfully done is in many cases the cheapest and most effective method of preventing beginners in crime from becoming professionals.

Children and the Cinema

The report of the Departmental Committee appointed in December, 1947, has recently been published and has been commented on in the press. It was not to be expected that it would contain any remarkable new information on the subject, which is one that has been considered and discussed at considerable length for some long time past. If the recommendations of the committee are accepted by the Government there may have to be fresh legislation dealing with the ages at which children are allowed to attend cinemas, with, presumably, more inspectors to see that the new laws are observed. We feel that very serious consideration should be given to this problem of enforcement before any such new provisions are enacted. We have already far too many laws that can be broken with comparative impunity. An absolute prohibition of the admission of children to certain films, whether accompanied by adults or not, would seem to be much easier of enforcement, and might, if the classification of films for this purpose was wisely and carefully done, be quite effective in tending to reduce the proportions of unsatisfactory films shown. But we do not profess to have expert knowledge on this subject and will not venture, therefore, to express any too positive opinion. We have an idea that on a fine sunny Saturday the fresh air is better for a child than the inside of a cinema, but here, again, we may be wrong.

The Pedestrians' Association

We have received the *Quarterly News Letter*, dated April, 1950, of this Association. We always feel that it is a great pity that emphasis should be placed on the interests of any particular class of road user, rather than upon the general interests of road users as a whole, but there is no doubt that the activities of this association have from time to time concentrated attention on important aspects of the problem of road safety and we must all be grateful for that since, at one time or another we are all pedestrians liable to find difficulty in negotiating the hazards of our busy streets. When, however, it is stated that "the committee continues to be concerned at the lax enforcement of the law and the inadequate penalties imposed for serious offences, not only by lay magistrates but by stipendiaries and judges," we wonder whether sufficient consideration has been given to the various factors which judges and magistrates must properly take into account in assessing the proper penalty for a particular offence. Experience shows that it is dangerous to rely solely on Press reports in such cases in forming a fair judgment, and that only those present in court who have heard the whole of a case can be sure of knowing the relevant facts.

We agree wholeheartedly on the need for drivers to make every allowance for children who do, and will continue to do, the most unexpected things on the spur of the moment and without thought of consequences. They should not be maimed or killed for so acting. Every attempt should be made to teach them to look before they leap, but drivers *must* take special care.

Dogs in the Road

Every motorist knows that if an accident in which his car is involved causes injury to any person or vehicle, or to animals of certain named types, he is required by statute to report the accident to the police as soon as is reasonably practicable, and in any case within twenty-four hours, unless his name and address have been given to some person on the spot. As regards persons, vehicles, and horses in charge of persons, this has been the law since s. 6 of the Motor Car Act, 1903. In s. 22 of the Road Traffic Act, 1930, the obligation was extended to other named animals and to all property. The named animals are any horse, cattle, ass, mule, sheep, pig, goat or dog. The cat, who walks by himself, would have been too difficult, and chickens, the commonest victims, would be hopeless. Of the named animals, dogs present most difficulty because their comparative smallness, their sometimes unpredictable movement, and their not infrequent emotional lapses from the rectitude of kerb drill, are apt to bring them under the wheels before they can be seen. A dog taking a man for a walk is often the wiser of the two: a dog walking alone often sets to bipeds an excellent example, but two dogs who meet, whether in the way of wrath or that of friendship, become every sort of heedless fool. Section 22 of the Road Traffic Act, 1930, sets out to protect them from themselves, or at least to ensure that their death or injury is duly registered at a police station, under a penalty of £20 for a first offence, £50 or imprisonment for a second or subsequent offence. Despite these penalties, on the heavy side by comparison with many modern Acts, there is reason to believe that neglect to report is often treated as a technical offence, and that neglect to report running down a dog is pretty general. A case at Littlehampton, reported in *The Times* of April 12, indicates another, and perhaps less technical, ground for proceeding in appropriate cases, namely, under the Protection of Animals Act, 1911. This enacts, among other things, that it shall be an offence cruelly to ill-treat an animal, or by wantonly or unreasonably doing or *omitting to do any act* to cause any *unnecessary* suffering to any animals. (The italics are ours, and we emphasize also the words "in appropriate cases" in the previous sentence.) The vicar of Lyminster drove into two dogs: it was evidently their fault, for they "appeared suddenly in the road." One was killed outright. The other was injured and howling. The vicar got out; could not see a house with lights showing, though there were said to be several houses near, and drove away. A resident nearby apparently saw the car, and the vicar was (said counsel) "eventually traced." The dog had died next morning. The decision does not indicate, as a learned correspondent half suggests in calling our attention to it, that the motorist who has run into a dog must handle the dog and so risk being bitten—as he probably would be, unless he had veterinary knowledge or great practical aptitude with dogs. Just what must be done depends on circumstances, and the section means simply what it says, that if a person can reasonably do something to prevent unnecessary suffering he is not to omit doing it. The law has applied the principles of the Good Samaritan to animals. At the least, upon the facts before them, the bench at Littlehampton apparently took the view that the vicar could, with moderate persistence and a little more human kindness, have found a house where people were about, who could have been told about the dog. They discharged a summons for failing to report, under the Act of 1930, but imposed a fine of £5 with three guineas costs for causing unnecessary suffering. It has been suggested that on certain roads carrying fast and frequent traffic it should be made compulsory for dogs accompanying people to be kept on a lead, both for their own sake and because a fool-dog can cause a motorist to swerve dangerously, and so produce mischiefs extending to a circle much wider than that in which he himself is chasing round. This would leave the unaccompanied dog

to his own devices and dangers, and would be hard to enforce. But Parliament may come to it yet since the alternative, of relieving users of the highway from the presence of all traffic proceeding faster than a horse, might be thought open to objection in these days, when the wheel has for some reason come to be thought of not merely as a propulsive instrument superior to the lever, but as entitled almost to a hierarchic precedence.

Judges and Public Status Quo

The issue for January, 1950, of the *Law Quarterly Review* contains the first part of an interesting note by Professor Havighurst upon "The Judiciary and Politics in the Reign of Charles II." The note is completed in the issue for April. In one sense this topic is familiar to every schoolboy, but it is worth reconsidering from time to time, because, after all, the judges in any generation are not exempt from all the common qualities of human nature. In the seventeenth century it was as natural to uphold the organized society in which they lived and functioned, as it was to an English lord justice to preside at Nuremburg, or Lord Goddard to deliver himself of *sententiae* conforming to those of his day and generation when sending Fuchs to prison. Merely human wisdom can never determine the relation between the judge's *sententiae* (or it may be prejudices) and ultimate truth, and even history can assess them only in relation to the development of human thought. It happens that accidents of history, Macaulay among the biggest, have brought into existence in the nineteenth and twentieth centuries several generations who almost instinctively look upon the judges who decided the case of shipmoney under Charles I, or that of Sir Harry Vane under Charles II, as mere "creatures" of the Crown. Chief Justice Foster's charge to the jury in *R. v. Tonge and others* (1662) included this passage: "Meddling with them that are given to change has brought too much mischief already to this nation; if you will commit the same sin, you must receive the same punishment." This can, from one side, be called politics upon the bench; seen from a different side, it is a truism. So can, and so is, the fundamental law of Russia which declares: "The administration of justice in the U.S.S.R. shall have as its province to protect from all infringements the social and state structure of the U.S.S.R. established by the U.S.S.R. constitution and the constitutions of the Union and Autonomous Republics; the . . . rights and interests of citizens . . . compliance with Soviet law . . . train citizens of the U.S.S.R. in loyalty to their native land and the cause of socialism." *Mutatis mutandis*, Blackstone said much the same, and so did Dicey. In every age, administration of the law postulates a settled condition of society, and the lawyer must, by the conditions of his being, believe—or conduct himself as one who believes—that the conditions settled at the time are sound and just. This inherent tendency has far more to do with the sort of judgment the courts will pronounce than has the judge's security or insecurity of tenure in his office, though Professor Havighurst makes a strong case for the accepted view that, in the latter part of Charles II's reign, when conditions of tenure had been altered, the quality of the work done by the courts decayed.

Unclean Books

Our contemporary the *Medical Press* calls attention to a danger to health, in one sense minor, but very widely spread, namely, the infective possibilities of books. It is outside the power of local authorities to reduce the danger from books in private premises (for example, upon the lawyer's shelves), and it would be scarcely practicable to do much about books circulated by the now so popular subscription libraries. Local authorities can, however, do much more than is generally done to protect the public from infection carried into and out of their own public libraries. As Nietzche said, with a different meaning, books for the general reader are always ill-smelling books. The odour of paltry people clings to them. Mere dust, and the particles passing into the air from decaying bindings, have an irritating effect on many people, while the seeds of catarrh and more serious infections are as easily spread. The *Medical Press* suggests that amongst these infections are mumps, measles and poliomyelitis. Many local authorities have done what they can to cleanse library books, and to withdraw from circulation those which begin to show visible signs of filth. What more could be done is a technical question; for example, could there be an extension of vacuum cleaning to all books as and when they are returned to the library from circulation? But any reader who has had occasion to pull down from his top shelves his copy of *Blackstone* or *Burn's Justice*, which perhaps he looks at once or twice a year, can from his probable sore throat that night appreciate the insanitary condition into which books can get, quite apart from their faculty of passing infections on to those unwary enough to handle so dangerous a product.

The Protected Tenant and His Widow

Section 12 (1) (*g*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, defines the word "tenant" to include the widow of a tenant who was residing with him at the time of his death, or, where a tenant leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court. The incautious reader may say: Oh yes, a man must either leave a widow or not leave a widow, and if his widow was not residing with him she is not within the protection desired to be given: Parliament has therefore provided for three cases, and the ground is covered. It may be supposed that Parliament and the draftsman intended to do so, but the definition is singularly lacking in perspicacity. In the case where the wife was not residing with her husband she, it is true, has no claim as against his landlord to be allowed to go into possession after his death and enjoy the protection of the Act. But there may be other persons who on merits have a perfectly good claim. How do they stand in law? The tenant may have had a resident mistress: her claim to stay on in the house after his death will on merits depend upon the length and permanence of the relationship. She may have been a temporary fly-by-night, or a woman who has lived under the tenant's name for twenty years and brought up a family of children by him, whom everybody except the couple believed to be legitimate. In real life, as well as on the stage and in novels, it could have happened (for example) that a wife has gone away and been genuinely believed to be dead. The husband goes through a ceremony of marriage, after several years, in all innocence. On his death the missing wife reappears; the supposed wife is thus proved to have been no wife, and therefore is no widow, of the tenant. Or the tenant, on his wife's leaving him, or becoming insane, or as the case may be, may have refrained from taking any outsider into his home, and had a daughter keeping house and looking after him. Take an extreme case: he is eighty years old; his wife deserted him long ago, but the landlord knows she is not dead, or his wife has for many years been in an asylum; a daughter now over fifty has devoted her life to looking after the man. Or the daughter may be a widow, who with her own young children has given up her home and come to take care of the grandfather. The intention of the Act, in giving security of tenure not only to the tenant but by the extended definition also (in certain cases) to members of his family, must have been to prevent persons such as we have here described from losing their home by reason of his death. But

they will lose it; although the daughter and grandchildren (and in ordinary acceptance the permanently established and supposedly married concubine) are members of the tenant's family, he has not qualified them to take advantage of the definition, because, there being a widow albeit not residing with him, he was not a tenant who "leaves no widow."

LIGHTS ON VEHICLES

The lights required to be shown by vehicles on roads are regulated by the Road Transport Lighting Act, 1927, the Road Transport Lighting (Cycles) Act, 1945 (to be cited together as the Road Transport Lighting Acts, 1927 and 1945) and the Road Vehicles Lighting Regulations, 1950 (S.I. 1950 No. 622). These latter were made on April 14, 1950, and came into operation on May 1, 1950. They make certain changes in the former provisions and these changes will be referred to in the course of this article. It is to be noted that s. 2 of the 1945 Act is not yet in force.

The obligation is cast upon every user of a vehicle to see that the lamps fitted to that vehicle comply with the requirements of the Acts and the regulations. By s. 10 of the 1927 Act if any person causes or permits any vehicle to be on a road in contravention of the Acts or the regulations, or otherwise fails to comply with any such provisions he is liable to a maximum fine of £5 for a first offence and of £20 for a second or subsequent offence. A driver can escape conviction if he proves to the satisfaction of the court that such an offence arose through the negligence or default of some other person whose duty it was to provide the vehicle with a lamp or lamps.

We fear that most people, however law-abiding, are content to rely upon the manufacturers of cars and other mechanically propelled vehicles to see that the lamps fitted as standard equipment to those cars and vehicles comply with the Acts and regulations, and do not make experiments to ascertain at what distance the beam of light emitted from the lamps is capable of dazzling anyone whose eye-level is not less than three feet six inches above the same horizontal plane as that on which the vehicle is standing; or (much more complicated) whether their red reflector is so constructed that, if placed 100 feet away from and squarely facing a source of light throwing a beam of white light of 2,000 candle power in the direction of the reflector, it will when turned in any direction through an angle not exceeding 22½ degrees reflect a beam of red light of not less than one-thousandth of a candle power in any direction making an angle not greater than three degrees with an imaginary line connecting the centres of the reflector and the source of light aforesaid, and will not reflect any letter number or other mark. However, it is the law that every red reflector shall be so constructed and we trust that police officers, whose duty it is to see that the law is observed, have some means of dealing with the problem of enforcing this particular regulation.

The period during which lights must be displayed by vehicles is "during the hours of darkness," *i.e.*, during "summer time" between one hour after sunset and one hour before sunrise and during the rest of the year between half-an-hour after sunset and half-an-hour before sunrise.

By s. 2 of the 1927 Act no vehicle may carry a lamp showing a red light to the front or one showing other than a red light to the rear. There are exceptions to the latter requirement in the case of lamps providing internal illumination for vehicles, illuminating a number plate, taxi-meter or device for giving signals to overtaking traffic. In the case of public service vehicles the exceptions cover also lamps for illuminating direction boards, etc.

What are referred to as the obligatory lamps which vehicles are required to carry are set out in s. 1 of the 1927 Act. This is modified, as respects bicycles and tricycles by s. 5, as respects horse-drawn vehicles by s. 6, as respects vehicles carrying overhanging or projecting loads by s. 7, and regards vehicles towing or being towed by s. 8. The law on these matters is the same as it has been since 1927, except for the change effected by the 1945 Act, by which pedal cycles *must* display rear lights. "Solo" bicycles, whether propelled by mechanical power or not, and pedal tricycles need not carry any lamp if being wheeled by a person on foot as near as possible to the left-hand edge of the carriageway. The convenience of this exception to the cyclist is obvious, but it has its disadvantages for motorists with consequent dangers for cyclists, and it is to be hoped, particularly if there is any mist or fog, that cyclists will see the wisdom of carrying lights whenever possible even though they may be pushing their machines instead of riding them.

The 1950 regulations, as in the case of those which they replace, specify various details about the way in which lamps may be fitted to vehicles and about the construction of the lamps for the purpose of ensuring that the beams of light emitted from them shall not dazzle other road users. These latter requirements are admirable, but unfortunately, as night drivers are only too well aware, they do not prevent dazzle. So far as we are aware there has not yet been devised any method of ensuring that not only shall lamps be suitably constructed, fitted and maintained as required by the regulations but also that drivers shall so use the lamps that the object sought by the regulations is really achieved. We are opposed to the making of laws which cannot be adequately enforced, and we do not suggest, therefore, that it should be made an offence to fail either to dip one's headlight or otherwise so to use one's lights as not to cause dazzle, but we do wonder whether a publicity campaign sponsored possibly by the two big motoring organizations might not do something to reduce the dazzle nuisance which may well be a cause of serious accidents.

The first alteration made in the 1950 regulations is that which allows an obligatory front lamp in a vehicle drawn by two or more horses or other animals to be so fixed that the centre of the lamp is not more than 5 feet 9 inches from the ground instead of 5 feet as in the case of all other vehicles except public service vehicles (reg. 5 (*a*)). There must be a reason, of which we are ignorant, why the number of animals drawing the vehicle is allowed to affect the height of the lamp from the ground.

The next change is the omission of the former requirement that the two obligatory front lamps should be of the same power. This was contained in reg. 7 of the 1936 regulations, but is not to be found in the corresponding reg. 6 in the 1950 regulations.

These latter regulations contain an entirely new provision (reg. 8) to apply to motor vehicles first registered on or after January 1, 1952. In their cases front lamps shall be fixed so that the centre of any lamp is not more than 3 feet 6 inches and not less than 2 feet 2 inches from the ground. The minimum distance may be reduced in the case of a lamp used only in conditions of fog or while snow is falling. At present the minimum distance, which also does not apply to a "fog-lamp," is 2 feet (reg. 9 (2)).

A minor amendment contained in reg. 9 (3) makes the exemption from the main requirements of that regulation apply to lamps with an electric bulb *or bulbs* if the power of any bulb, *or the total power of all the bulbs which are capable of being illuminated at the same time* does not exceed seven watts and the lamp is fitted with frosted glass or other similar diffusing material. The italics show the amendment.

In reg. 10 (side deflection with the movement of the front wheels of the vehicle) it is permitted for the centre of any lamp to which the regulation applies to be 3 feet 6 inches instead of 3 feet 3 inches from the ground as formerly.

Regulation 12 prohibits, with certain exceptions, the keeping alight on stationary vehicles of any lamp showing a light to the front which has a bulb of greater power (or bulbs of greater combined power) than seven watts. To the exceptions are now added searchlights or other special lamps on vehicles used for emergency repairs to sewers, or to gas, water or electricity mains, pipes or cables.

We have already mentioned red reflectors. The requirement that they shall not reflect any letter, number or other mark is new (reg. 15).

The new regulations do not contain any provisions (as did those of 1936) that pedal cycles are to be exempt from carrying a red rear lamp if they have instead both a red reflector and a suitable white surface. There is no exemption by which pedal cycles need not carry a red rear lamp (except that which applies when they are being pushed as we have previously noted) and when s. 2 of the 1945 Act is brought into force they will have to exhibit to the rear a red reflector and a white surface in addition to the red light.

PROCEEDINGS BY POLICE UNDER 34 ED. III, C. 1

Since the reign of Edward III, the circumstances in which a person has been ordered to give surety for his good behaviour have been extended until the precise limits of the statute's application are doubtful.

Recently it has been common for those persons compendiously described as " Peeping Toms " to be bound over to be of good behaviour, after being brought by the police before a court of summary jurisdiction.

It is provided by s. 25 of the Summary Jurisdiction Act, 1879, that : " The power of a magistrates' court upon complaint of any person to adjudge a person to enter into a recognizance and find sureties to keep the peace or to be of good behaviour towards such first mentioned person, shall be exercised by an order on complaint and the Summary Jurisdiction Acts shall apply accordingly." It will be noticed that this section limits itself to a case where one private person lays a complaint against another private person and asks that he be bound over to keep the peace or be of good behaviour. It appears, therefore, that, where a person is brought before the justices by the police who ask that he be bound over, the Summary Jurisdiction Acts do not apply and the proceedings are governed by the law as it stood prior to 1879. (*Hayward & Wright's Office of Magistrate*, p. 76).

The power of a justice of the peace to bind a person over to be of good behaviour is derived from the Statute 34 Ed. III, C.1, and from his Commission of the Peace. The relevant portion of the statute reads as follows : " In every county shall be assigned for the keeping of the peace one lord and with him three or four of the most worthy in the county with some learned in the law . . . and to take of all of them that be not of good fame, where they shall be found, sufficient surety and mainprize of their good behaviour towards the King and his people." The words in the Commission are these : " We have assigned you jointly and severally, and every one of you, our justices, to keep our peace and to cause to come before you, or any one of you, all those who to any one or more of our people concerning their bodies, or the firing their houses, have used threates ; to find security for their peace of their good behaviour towards us and our people ; and if they shall refuse to find such security, then them in our prisons until they shall find such security, to cause to be safely kept."

It will be noticed that it is not necessary that there be more than one justice or that the person be brought before a court of summary jurisdiction. The point has been mentioned by successive authorities, and in the reign of Henry VIII Sir Anthony Fitzherbert writes : " That it seemeth that one justice may, by the Commission, issue a warrant against a person to find surety of the good behaviour, by his discretion, as well as two justices may ; and the words of the statute of the 34 Ed. III are to the same effect . . ." (Fitz. 7, 5, *Burns*, p. 756).

The most striking deviation from our normal present day practice is, however, that under the old procedure, the person brought before the justice had no right to controvert the facts as laid before the justice. This would appear to be contrary to the fundamental principle that a man must be heard in his own defence, but the origin of the rule would appear to be that in the case of a binding over to be of good behaviour, as in the case of a binding over to keep the peace, the person applying to the justice was speaking as to his own apprehensions regarding the future behaviour of the person produced, and his apprehensions were, in the very nature of things, matters upon which no other person could have knowledge. It was decided in many cases and laid down as a general rule that the evidence could not be resisted on any ground, except by showing direct evidence of express malice, such as declarations to that effect, but not inferred malice, collected from general reasoning or collateral circumstances (5 *Burns*, pp. 749-754). So it would appear that, today, in the case mentioned, when the police bring evidence as to the behaviour of the prisoner and ask for him to be bound over, the prisoner will have no right to cross-examine or call evidence to the contrary, except, perhaps, as mentioned above. Nevertheless, modern practice is generally to give the defendant the same right to cross examine and give evidence as if he were charged with an offence. This strikes most people as only fair and reasonable.

A further important point which might be overlooked is that, as a result of the exclusion of the Summary Jurisdiction Acts, the justice or justices will not be able to award costs in the matter.

To close, it is to be remarked how wide are the powers of the justice of the peace in these cases, emphasized by the fact that there is no appeal to quarter sessions against an order that a person be bound over under the Statute of Edward III (*R.* v. *London County Quarter Sessions* [1948] 1 All E.R. 72). It may be, as has been said, that the justices have a discretionary power, yet it is wise to recall that it is a legal discretion " in which in favour of liberty, great tenderness is to be used."

CHIEF CONSTABLES' ANNUAL REPORTS, 1949

(*Continued from p. 279 ante*)

14. BOURNEMOUTH

The population of the borough is 139,500 and the area 11,627 acres. The authorized establishment of the force is 205 and the actual strength 192. During the year, 142 applications for appointment were received, of which twenty-one were accepted. During the early part of the year recruiting was exceedingly slow, but subsequently there was a much improved flow of applicants and it is pleasing to record that by the end of the year there were only thirteen vacancies, including one policewoman. There are four policewomen serving. Fifty-five houses and married quarters are owned by the police authority and thirty-seven are rented; in addition seventeen prefabricated and two permanent type houses on housing estates were allocated to police. It is estimated that with the force at full strength thirty houses will be required in addition to the twenty already approved, as comparatively few single men are being recruited.

Indictable offences reported during the year totalled 2,033 compared with 2,477 the year before; after inquiry 250 reports were found not to disclose an offence. Ninety-nine juveniles were charged with 132 crimes; in 1948 juvenile offenders numbered twenty-four more and the offences charged were forty-seven more.

Road accidents totalled 1,104; fourteen people were killed and 495 injured. "A distressing feature is the number of fatal accidents, which is double that for the preceding year." Six were over seventy years of age.

Licensed houses number 145 and the police paid 1,540 visits of inspection. Twenty-nine males and two females were charged with drunkenness and in addition six persons were prosecuted for driving motor vehicles whilst under the influence of drink. Registered clubs total fifty-seven with a membership of 28,907.

Valuable assistance has been rendered during the year by the Special Constabulary who are either in possession or being provided with uniforms. The authorized strength of the corps is 150 of which there are 110 effectives.

15. SHEFFIELD

The population of the city is 511,757 and the area 39,598 acres. The police rate is 1*s.* 6½*d.* in a General Rate of 20*s.* in the £. The authorized establishment of the force is 780 including sixteen policewomen; the number actually engaged at the end of last year was 675 with one vacancy for a policewoman. For the first six months only fifteen recruits joined the force and there was a wastage of thirty-three; between July and December admissions to the constabulary numbered fifty-seven and only nineteen members left. "These figures show a remarkable change which followed the implementation of Part I of the Oaksey Report as from July 1," points out the report. The strength of the Special Constabulary was as in 1948—188. Only fourteen recruits were forthcoming as a result of the autumn recruiting campaign commenced concurrently with the Civil Defence drive "whilst Sheffield is authorized to recruit special constables up to twice the authorized establishment of the regular force (*i.e.*, 1,560), I feel that an active and trained Special Constabulary well below this figure is sufficient for our needs unless and until a grave emergency arises," says the chief constable.

"Liaison between the police and press is increasingly desirable in modern police administration and I am, therefore, glad to take this opportunity of expressing appreciation of the excellent relationship which exists in this City."

The average days lost per man through sickness was 14.53 against 16.23 in the previous year.

Crimes recorded totalled 4,987 of which 2,447 were detected; in the previous year 5,395 crimes were committed and 2,688 detected. Stolen property amounted to £58,544 and that recovered £12,856; in 1948 stolen goods were valued at £71,174 and recovered £13,875. Offences of burglary increased from fifty-nine to eighty-eight, housebreaking from 297 to 385 but shopbreakings fell from 551 to 491. Juveniles charged with criminal offences fell from 410 in 1948 to 378 last year; the detected crimes committed by juveniles fell from 810 to 732.

The number of road accidents during the year was 4,750 compared with 4,476 in 1948. Thirty-four persons were killed, four less than the previous year, and the lowest fatality record for twenty-five years. The injured numbered 1,765, an increase of 136 and the highest total since 1941. Nine children under seven years old were killed and 129 injured. At the time of the accidents most of the children were accompanied by older persons. Twenty *per cent.* of all casualties took place between 4 *p.m.* and 6 *p.m.*; the worst day of the week for casualties was Saturday.

An analysis of the causes of the fatal accidents shows that pedestrians were themselves responsible for twenty-three of the twenty-seven accidents in which they were involved. The blame was primarily attributed to the driver of a motor vehicle in eight cases and to a pedal cyclist in two. As regards injury accidents, investigation shows that pedestrians were responsible for thirty-eight *per cent.*, drivers of vehicles twenty-five, pedal cyclists twelve, passengers eleven and other causes fourteen *per cent.*

Licensed premises number 1,177 and police paid 13,621 visits of inspection. Proceedings were taken against 182 males and twelve females, an increase of forty-three. There are 130 registered clubs with a membership of 111,083; three clubs were struck of the register, one not having been conducted in good faith and two having ceased to exist.

16. EASTBOURNE

The population is 56,000 and the area 11,356 acres. The constabulary strength by Home Office authority is 124 and the actual 115, including three policewomen. In addition there are nine female civilian employees and two cadet clerks. During the year four men resigned, one on pension; thirteen probationers were appointed; four men were promoted to inspector's and sergeant's rank.

Twenty-nine houses and five flats are owned by the police authority: two more houses are to be erected this year and two next year. The actual strength of the special constabulary is forty-eight and there are fifty-eight vacancies.

Crimes reported to the police totalled 615, a decrease of 126 on the 1948 figure; the percentage of detection was sixty-one, the year before fifty-seven. Twenty-four juveniles were dealt with for indictable offences, against thirty-six the year before and sixty-three in 1939.

Road accidents numbered 609, an increase of ninety-one, four cases proved fatal, an increase of one compared with 1948. There were 217 persons injured, ten more than the year before.

(*To be continued*)

LOCAL GOVERNMENT REFORM

A hare started by Sir Malcolm Eve in a letter to *The Times*, where he suggested that the present political stalemate would be a good time to tackle local government reform, has so far been chased rather half heartedly, with attempts from one or two quarters to turn it from a straight course. It may be that, when it has been running longer, a larger field will join the hunt. Sir Malcolm Eve's plea for doing something now amounts to this : in ordinary times local government reform, if attempted by the government of the day, would be opposed politically, and a project of reform must mean votes lost in some quarters. Any such project (he might have added) would be as unlikely to win votes, since the subject has no popular appeal. Professor Robson, in a letter to *The Times* a few days later, turned this argument of public indifference round, by doubting whether any scheme of reform by whomsoever introduced would ever lose the introducer's party an appreciable number of votes. To some extent the answer to his doubts must be conjectural, because no one can be sure what would be the loss of votes today from a type of measure which has not for many years been introduced : Mr. Neville Chamberlain undoubtedly cast away some conservative support by the Rating and Valuation Act, 1925, not because the rank and file of the party cared about overseers as an interesting survival of the Elizabethan epoch, but because many middle class ratepayers thought their assessments were going up by reason of the Act. This obviously would not make them vote for socialist candidates, but it did cause many to abstain from voting. But Professor Robson could still say that it was pockets, not politics, which led to those abstentions. The Local Government Act, 1894, was avowedly political. It grew a great deal, in the hands of the draftsmen and of Parliament, until its popular but mistaken title " the Parish Councils Bill " was no longer suitable. Much of what was added to the original conception had no particular political flavour, but in its inception it was a measure designed to disestablish the squire and the parson, and so to strengthen liberalism in country districts. The Local Government Act, 1888, introduced by a conservative government, was also modified substantially in its passage through Parliament, notably by the provisions under which most modern county boroughs have been created, but in its original form it, like its successor, had a fundamentally political aim, that of converting county government by justices into government by county councils and thereby, if no more than incidentally, strengthening political organization in rural constituencies. Each of these Acts was followed by the fall of the government which passed it into law, but in each case that fall was due to other causes, not to resentment at the changes wrought in local government, and it can be doubted whether the political motive, either for promoting a local government Bill or for opposing it, would have as much weight today as in the last decades of last century. It may therefore be that Sir Malcolm Eve and Professor Robson are both right in what they say : that a local government Bill, whatever was in it, would rouse some opposition, but also that this would be mainly on the part of the existing local authorities and their associations, whose differences among themselves, and grievances against steps taken in Parliament which affect them, leave the great mass of the electorate remarkably cold. Disraeli could castigate the whigs by accusing them of setting Irish boroughs against English counties, but the day has gone by, if it existed even in the eighteen-thirties, when popular movements would be roused by altering the constitution of local government authorities. We incline to agree with Professor Robson, when he says governments tried to keep their ears to the ground for rumours of dissent or disapproval in this or that quarter, but, apart from the trouble already mentioned within Mr. Chamberlain's own party, an observer will find it difficult to point to any up-rising of popular feeling in consequence of the Rating and Valuation Act, 1925, or the Local Government Act, 1929. The populace neither knew nor cared what was being done. Such indignation as was aroused by the drastic changes of 1929 and the following years was among members and would-be members of local authorities of different sorts, and among their officials, for whom a change made by Parliament at the instance of the government might make all the difference between improved status and being thrown back upon a claim to compensation for the loss of office. Looking back, it can be said that the main interest of the Royal Commission under the chairmanship of Lord Onslow lay in the struggle for the aggrandizement of boroughs and acquisition of county borough status on the one hand, and opposition to county boroughs on the other—and, when all is said and done, this was never more than a question of machinery. Later there was another struggle of a different sort, or rather a one sided agitation over the supposed encroachments by an anonymous but acquisitive central government upon the liberty to do or not to do which local authorities had formerly enjoyed. Professor Robson, in the letter above quoted, suggests that if local authorities had devoted less time to fighting among themselves and more energy to fighting successive governments, they might have retained a number of functions such as public assistance and transport, which they have lost in the Parliament just closed. We agree that a deal of pother was stirred up by this cry that centralization must be stopped : indeed, from time to time we ourselves called attention, before the general election of 1945, to the uttering of this cry in quarters where we thought there was no real reason for it. We never thought, and do not now see, that in the period between the wars the much maligned centralization was deliberately being set on foot. There was certainly, and the country has not yet seen the last of, a move rather of blind forces away from the small unit towards the large. The principle which Field Marshal Smuts calls " holism " was strongly at work. The parish became too small a unit for poor relief and rating. It gave place a century and a quarter back to the poor law union for the one purpose, and in 1925 to the district for the other. For general local government in rural areas it gave way to the rural district council, which took over functions that had during a transitional period been exercised by the guardians ; later the union died, and in turn district councils, urban and rural, lost a great many functions to the county. It was no more than the logical working out of this trend that the county should lose functions to the nation, and we do not think that in public assistance, for example, a halt could have been called at the level of a region or a greatly enlarged county of London, which we believe Professor Robson advocates. Actually, the process has in some matters gone further still, since England and Scotland have been treated as one unit. Seen against a background of forces which no politician could have resisted, the adherence of the local government world to the settlements of 1888 and 1894, their virtual insistence that the last word in wisdom had been uttered in those years, can be regarded in much the same light as the adherence of the whigs to the principles of 1688, or of twentieth century radicals to the People's Charter. The world moves on, but the Bourbons of local government and indeed of Westminster can never forget and are very slow in learning. To them the conflict between

that the tumult and the shouting are among local authorities, who stand to lose or gain by governmental measures in this field. Any readers who were in touch with the beginnings of legislation affecting local government between the wars will know how county and borough, and the two or three tier system of local government, seem not merely commendable attempts to get things done, not merely useful and conceivably mortal pieces of machinery, but eternal verities.

We think it is worth while at this point to pose again some questions which in previous years we have asked readers to consider. If the county was for some purposes a better, because a stronger, unit than the parish, why should there not be units better than the county? Why must so many devotees of local government see red at the mere word "region"? Can they seriously pretend that a regional government would be remoter from the ordinary elector than a county council? Can indeed the county council or the council of the larger county borough pretend that there is any intimate touch between itself and its electors? The plain truth is that all the powerful units of local government, on which the central government has relied more and more as it and they simultaneously weakened the less powerful units of local government, have for long been nothing but an oligarchy, elected by a smallish proportion of those whom they govern, and governing through an ever increasing army of officials. We realize that this sounds a harsh saying in an epoch when "oligarch" has become a mere abusive epithet, but we use the word precisely. Moreover, the local body of salaried officials has inevitably become less and less responsive to the opinions (if any) of the constituents of the oligarchy, as it gained security of tenure and a statutory right to superannuation. One reason why the large local authority with its officials is, by comparison with the House of Commons, so unresponsive to the winds of popular opinion, is the fact of its being elected for a term certain, instead of being exposed to dissolution, as is the House of Commons, whenever the government of the day finds itself out of touch with popular feeling. No one of these arrangements is among the fundamental verities. Not even the holding of elections. It is a salutary exercise at a time like the present, in response to Sir Malcolm Eve's challenge, to turn in upon ourselves and ask: What and why is local government? It has been said that all government is local. Imperious Caesar before he died and turned to clay had to rely, for the carrying out of his decrees, upon persons scattered about his dominions, through whom he could keep more or less in touch with, and keep an eye upon, the public whom he required to comply with those decrees. In this sense the young man in uniform, who rummages your luggage on landing at Liverpool, is as much "local government" as the lord mayor and aldermen of the city. They and he are performing governmental functions, and doing so in a limited area, even though the one obeys a central government and other does not. It is in the measure of this obedience that a large part of the conflict lies. Whilst a person who owes his governing function to his appointment by the central government has no instinctive doubt about their right to control his actions, the person who owes the power of exercising governmental functions to election by the inhabitants of a limited area thinks of himself as responsible ultimately to those inhabitants, rather than as being subject to a higher government organ, which is itself responsible to the inhabitants of a larger area. This reflection is relevant to what we are tempted to call one of the red herrings drawn across the trail of local government reform, by another academic contributor to *The Times* in April. This was Mr. W. S. Steer, Lecturer in Public Administration at the University College of the South West at Exeter. He speaks under the heading "Two Democracies," of insistence upon uniformity of standards between one district and another. This began with education grants in 1870, and was seen also in police grants at an early date. The document which to nineteenth century educationalists was known quite simply and *par excellence* as "The Code" had been drawn up because Parliament, even in the middle of last century when it decreed universal primary education, insisted that this should attain a certain standard, albeit the means of attaining this was through local government organs. More or less simultaneously, and without at first the incentive of governmental grants, came the intention on the part of Parliament to ensure that in matters of health there should also be at least a minimum standard. This is to be found in s. 299 of the Public Health Act, 1875. It was soon realized by the Local Government Board that it was extremely difficult to coerce into laying (for instance) a system of main sewers an elected local authority which thought sewerage a worthless innovation. This is not a fanciful example. The council of an historic city, one of the original county boroughs of the Local Government Act, 1888, succeeded for a generation in defeating the Local Government Board's efforts to compel them to provide proper sewers, and it was largely because of the impossibility of enforcing minimum standards, in face of local opposition, that the grant system, exemplified at first by education and police, got into its stride. Now there is at this point a fundamental incompatibility: the learned dangler of this particular red herring would, if his suggestions were given logical effect, produce the result that Barchester need have no sewers, and Hogsnorton can go without a water supply. But it is quite certain in the middle of the twentieth century that the political outlook, which has brought us to the welfare state, would not tolerate a condition in which the children of Worsted Skeynes remained illiterate, caught smallpox, and grew up into bandits, for no other reason than that the rural district council and the county council were at one in refusing to spend money on schools, isolation hospitals, and police. It is a commonplace, nowadays, even in international affairs that disease is no respecter of frontiers, and similarly in home affairs no serious thinker will accept a local government boundary as justifying different standards of development in the particular matter in which he is himself most interested. We suspect that even the last-mentioned contributor to *The Times* would deprecate illiteracy in Exeter, if it happened that the city council and a temporary majority of the local electorate saw no use in learning, even though he might be prepared, for consistency with his letter to *The Times*, to tolerate unconverted privies in a slightly distant rural area of Devonshire. Add together the people who think that education is a good thing; those who believe in police, or sanitation, or a uniform standard of main roads, and you get enough propulsive force in the community as a whole to iron out these local differences. Many a traveller is charmed by the old-world air and primitive condition of a foreign town, when he would be forward enough to condemn the same things within daily reach of his English eye or nose. Local differentiation, in what a large body of people have agreed to regard as modern necessities of life, is a cock that will not fight in the second half of the twentieth century. So far, the only method devised for satisfying the widespread desire now commonly entertained for a high degree of uniformity in public services is the method of central government control. Hence the dilemma: is the local authority to be regarded as an instrument for providing services, which a generally diffused public opinion thinks ought to be provided, or is it to be regarded as an instrument for doing things which, at the time being, the majority of the local public thinks ought to be done—those things being sometimes ahead of the general level of desire, but often behind what is thought to be desirable by, at any rate, a large section of opinion in the country as a whole? Or is local government to

be regarded as an exercise ground for persons who feel the need to be up and doing, and will be frustrated if they are deprived of the opportunity to talk at intervals about what needs to be done? Each of these functions of local government has its adherents, conscious or unconscious, and each is sometimes uppermost when local government reform comes to be considered.

(To be continued)

CHARTER SCALES SHOULD BE REVISED

The National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services was established in its present form in 1944 and published the first edition of its Scheme of Conditions of Service in January, 1946. Scales of salaries for all staff receiving up to £760 were prescribed, falling into certain divisions classified as General, Clerical, Higher Clerical, Miscellaneous, and Administrative Professional and Technical. The scales contained certain curious features, not least of which were the definitions of the various divisions. It was also interesting to observe that whereas the work of a female professional worker was adjudged to command the same basic remuneration as that of a male of the species performing equivalent duties, such was not the case with clerical labour. It is in the general and clerical divisions, of course, that most female staffs are graded.

The scheme remained in force until December, 1947, but dissatisfaction with its provisions had existed for some time previously and became increasingly vocal. In January, 1948, after the two sides of the National Joint Council had failed to agree, new scales were fixed by the National Arbitration Tribunal. The broad effect of the tribunal's award was to provide for payment of a consolidated salary equivalent to the former basic salary plus cost of living bonus. There was some increase in the General Division Scale, particularly for juniors, and in the Clerical Division Scale. The differences between the salaries of males and females on the same administrative, professional or technical grade which had formerly existed due to a difference in cost of living bonus was eliminated.

Now voices are being raised in protest again and, if we are not mistaken, there will be some blunt speaking at the conference of the National Association of Local Government Officers to be held at Eastbourne this month. Figures show that up to mid 1949 the present grades of salaries represented increases over comparable 1939 figures roughly equivalent to the computed increase in the cost of living. Prices have continued to rise, however, and, in addition, the doctrine of wage freezing (or wage restraint as it is now less inappropriately called) has been applied unevenly. Policemen, roadmen, school cooks and maids, ambulance personnel, firemen and building trade operatives have all received wage increases during 1949, while teachers are campaigning vigorously, and enlisting much public sympathy, for a revision of the Burnham scales. These are some of the reasons for a certain restiveness in the local government service: it remains for the future to disclose whether any general upward revision of the Charter grades will ensue.

The possibility of such a revision does, however, invite consideration of the structure of the existing scales, the way in which individual officers are graded, and, indeed, whether the remuneration of all officers earning up to £1,000 a year can be satisfactorily determined within the limits of rigid national scales which obviously cannot take account of local circumstances.

We appreciate some of the problems with which the National Joint Council was faced and some of the reasons leading to the adoption of the present system of grading. The case of female staff has been mentioned earlier: it is difficult to detect any reason other than one of pure expediency why female labour of an administrative, professional or technical character should be rated as worth the same pay as equivalent male labour whereas female clerical labour is regarded as worth a good deal less than the male equivalent. We understand, too, how the desire to ensure a minimum standard at different ages influenced the introduction of the general division grade where pay is determined by age, but question whether in view of the serious weaknesses of the grade as applied in practice the same end should not be attained by other means. There is surely something wrong with a scale which enables a clerk, a typist, or a machine operator to enter local government service and in certain circumstances receive almost twice as much in salary as another officer who may have worked in that office for five or six years, be fully experienced in the work and who may, in fact, have to instruct the newcomer in his or her duties. Is the best way to encourage enthusiastic and efficient workers completely to ignore experience and merit when deciding the size of the pay packet? It is significant that some local authorities have already broken away from the wage for age idea. Thus it is reported that shorthand typists employed by the Birmingham Corporation will be paid in future one of three grades based on proficiency and length of service. The proposed grades are:—

(*a*) £150 rising to £210 a year subject to a proficiency standard in shorthand of eighty words per minute and in typewriting of thirty-five words per minute;

(*b*) £215 rising to £260 a year subject to a higher standard of 120 words per minute for shorthand and fifty words per minute for typing;

(*c*) £280 rising to £308 a year subject to the same proficiency standard as in (*b*) plus five years' approved service.

The way in which individual officers have been graded has also caused much concern: it is likely to cause more when officers in general have digested the facts shown in a book recently published by the National Joint Council entitled "A Survey of the Local Government Service." This publication gives information about the way in which 1,009 local authorities have graded 116,000 officers and discloses startling differences between authorities. What, for instance, can account for the fact that in Kent 34 *per cent.* of the male staff are graded in the general division while in Glamorgan the corresponding percentage is 18? While local factors may have some effect we suggest that the major cause of this enormous difference is varying interpretation of the paragraphs in the National Scheme which define the classes of officers falling within the general, clerical and higher clerical divisions respectively. These definitions are remarkable for their vagueness and it is safe to say that no two persons working independently and endeavouring to apply them could succeed in arriving at the same grading for any number of cases. In the example quoted obviously either the Kent officers or the Glamorgan ratepayers have cause to feel aggrieved.

The impracticability of trying to make rigid classifications of local government officers as if they were, say, so many building trade craftsmen and labourers is clearly shown by the big differences disclosed by the survey. It is right that the employee should be paid the rate for the job—as long as the job is clearly

understood and defined. Such is not the case at present in local government and its achievement in the future is fraught with almost insurmountable difficulties. Even if rigid standardization were possible its desirability is more than doubtful. We recall the words of Mr. James Lythgoe, City Treasurer of Manchester, when delivering his presidential address at the conference of the Institute of Municipal Treasurers and Accountants in 1948 :—

> "The fixing of terms and conditions of employment for chief officers and all other grades of professional, administrative and clerical staffs of local authorities is a development which, unless applied on a basis which allows reasonable latitude to individual local authorities in regard to terms and conditions and scope for advancement and promotion, may easily result in a loss of efficiency and incentive amongst employees and an unduly heavy cost of administration. Maximum flexibility and discretion at local levels is, in my view, a prerequisite of the smooth working of any schemes of this kind."

There is sound truth in these words and it may well be asked whether a contraction of the responsibilities of the National Council is not a desirable development. It is interesting in this connexion that one of the largest branches of officers is submitting a resolution to the N.A.L.G.O. conference proposing that the future policy of N.A.L.G.O. be not to accept national grading.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Sir Raymond Evershed, M.R., Jenkins, L.J., and Roxburgh, J.)

PRITCHARD *v.* POST OFFICE

May 17, 1950

Negligence—Nuisance—Highway—Fencing of open manhole adequate for ordinary user—Injury to blind person—No special duty towards infirm persons.

APPEAL by plaintiff from Liverpool County Court.

For the purpose of doing work on a telephone cable and in exercise of statutory powers, servants of the defendants, the Post Office, removed the cover of a manhole in the highway, and placed round the opening a light wooden structure, in character not unlike a towel horse, which was an adequate warning to a normal person. The plaintiff, who was blind, did not see the guard, and she stumbled into the manhole and sustained injuries. She claimed damages from the defendant for nuisance and negligence.

Held, there was no special duty on the defendants to safeguard infirm persons from injury on the highway, and the plaintiff's claim failed.

Counsel : *G. V. Craine* for plaintiff ; *Paull, K.C.*, and *Norman Sellers* for the defendant.

Solicitors : *Helder, Roberts & Co.* for *John A. Behn, Twyford & Reece*, Liverpool ; *Solicitor to the Post Office.*

(Reported by F. Guttman, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Humphreys and Parker, JJ.)

R. *v.* HUNT AND ANOTHER

May 15, 1950

Criminal Law—Gross indecency between males—No actual physical contact—Two men making grossly indecent exhibition to each other—Criminal Law Amendment Act, 1885 (48 *and* 49 *Vict., c.* 69), *s.* 11.

APPEALS against conviction.

The appellants were convicted at Wiltshire Quarter Sessions of committing an act of gross indecency with each other. They were found in a shed making a grossly indecent exhibition to each other, but were not in actual physical contact. In answer to a question by the jury, the deputy-chairman directed them that, to establish the offence, it was not necessary for the prosecution to prove that there had been actual physical contact between the persons charged.

Held, that the direction was right, and that the offence could be committed if two men placed themselves in such a position that a grossly indecent exhibition occurred between them. The appeals must, therefore, be dismissed.

Counsel : *G. H. Rowntree* for the appellants ; *D. J. Ackner* for the Crown.

Solicitors : *Taylor, Wilcocks & Co.*, for *Kinnetr & Co.*, Swindon ; *Townsends*, Swindon.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

CHANCERY DIVISION

(Before Romer, J.)

Re STERN, STERN *v.* STERN

May 5, 12, 1950

Infants and Children—Maintenance—Appeal from order of justices enforcing previous order for maintenance—High Court jurisdiction to hear—Guardianship of Infants Act, 1925 (*15 and 16 Geo. 5, c. 45*), *s.* 7 (3).

APPEAL from an order of the Carmarthen justices, dated March 18, 1950, ordering the father to pay to the mother of the infant £128 arrears of maintenance payable under an order of November 30, 1945.

By a consent order made on November 30, 1945, under the Guardianship of Infants Acts, the father was ordered to pay to the mother of an infant £1 a week for the maintenance of the infant, the custody of the infant being given to the mother. The father fell into arrears with the weekly payments, and on February 25, 1950, the mother took out a summons to enforce payment of the arrears. By an order of March 18, 1950, the father was ordered to pay £128, being the sum due for the arrears. He appealed against this order.

Held, the High Court had no jurisdiction to hear the appeal, because there was no provision in the Guardianship of Infants Act, 1925, for an appeal from an order of the justices simply enforcing a previous order for maintenance.

Appeal dismissed.

Counsel : *Tudor Evans* for the father ; *Edmund Davies, K.C.*, and *J. Verdi Jenkins* for the mother.

Solicitors : *Lynch, Hall & Son* ; *Helder, Roberts, & Co.*, for *W. H. Rogers & Rogers*, Carmarthen.

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Humphreys and Morris, JJ.)

PENNY *v.* NICHOLAS

May 9, 1950

Road Traffic—Excessive speed—Method of proof—Evidence of accuracy of speedometer—Road Traffic Act, 1930 (20 *and* 21 *Geo. 5, c.* 43), *s.* 10 (3), (*as substituted by Road Traffic Act*, 1934 (24 *and* 25 *Geo. 5, c. 50*), *s.* 2 (3)).

CASE STATED by Marlborough justices.

At a court of summary jurisdiction at Marlborough an information was preferred by the respondent, Reginald Henry Nicholas, a police officer, charging the appellant, Richard Herbert Penny, with unlawfully driving a motor car on a road in a built-up area at a speed greater than thirty miles an hour, contrary to s. 1 (1) of the Road Traffic Act, 1934.

On October 2, 1949, a police-constable, driving alone in a police car, followed the appellant's car through a built-up area. The police-constable kept an even distance behind the car. Over four-tenths of a mile the speedometer in the police car showed an even speed of forty miles an hour. On August 4, 1949, and October 14, 1949, the police-constable tested the speedometer of his car with a police-sergeant and another policeman. The constable drove his car over a measured distance at speeds registered on the speedometer at thirty and forty miles an hour, and the sergeant and the other policeman timed him by means of a stop watch, calculated the speed, and informed the constable that on those calculations the speedometer was correct. The police-constable was the only witness for the prosecution. The appellant denied that he was travelling at over thirty miles an hour, and it was contended on his behalf that the accuracy of the speedometer had not been proved ; that the constable had no personal knowledge of the stop-watch readings or of the accuracy of the stop watch and could not give admissible evidence as to the correctness of the speedometer ; and that anything which the sergeant said to the constable was hearsay.

The justices were of opinion that the speedometer was accurate, convicted the appellant, imposed on him a fine of £1, and ordered his licence to be endorsed.

The appellant appealed. The justices desired the opinion of the court whether the constable's evidence as to the speedometer tests, in the course of which he relied on the observations of and information given by other officers who did not give evidence, was rightly admitted.

By s. 10 (3) of the Road Traffic Act, 1930 (as substituted by s. 2 (3)

of the Road Traffic Act, 1934): A person prosecuted for driving a motor vehicle on a road at a speed exceeding a speed limit . . . shall not be liable to be convicted solely on the evidence of one witness to the effect that in the opinion of the witness the person prosecuted was driving the vehicle at a speed exceeding that limit.

Held, (i) that the evidence of the speedometer tests was hearsay and inadmissible; (ii) the justices were entitled to act on the evidence of a police officer who said that he had followed a car at an even distance and that his speedometer showed a certain speed, without proof of the accuracy of the speedometer, and that *dicta* of LORD HEWART, C.J., and CHARLES, J., in *Melhuish* v. *Morris* ([1938] 4 All E.R. 98) to the contrary were not to be followed; and (iii) that the case must be remitted to the justices to say whether they would have been satisfied that the offence was proved apart from the inadmissible evidence of the speedometer tests.

Counsel: *Skelhorn* for the appellant; *Widgery* for the respondent.

Solicitors: *McKenna & Co.*; *Collyer-Bristow & Co.*, for *P. A. Selborne Stringer*, Trowbridge.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

GARDINER *v.* SEVENOAKS R.D.C.

May 10, 1950

Cinematograph—Storage of films—Safety regulations—"Premises"—Underground excavation—Entrance closed by wooden door—Celluloid and Cinematograph Film Act, 1922 (12 *and* 13 *Geo.* 5, *c.* 35), *s.* 1.

CASE STATED by Kent justices.

At a court of summary jurisdiction at Sevenoaks, the appellant, Samuel Gardiner, appealed against a notice containing certain requirements with regard to the storage of films under the Celluloid and Cinematograph Film Act, 1922, served on him by the respondents, Sevenoaks R.D.C. The appellant had taken a lease of Chipstead Caves for fourteen years at a yearly rent of £100, a condition of the lease being that the caves should be used for no other purpose than the storing of films. The caves, which were underground, had been in existence for fifty years, and had been formed by excavating and quarrying for sandstone. The entrance to them was down a cutting and was closed by a wooden door, which was the only means of entrance and exit. It was contended for the appellant that the caves were not "premises" within the meaning of s. 1 of the Act. The justices dismissed the appeal, and the appellant appealed to the Divisional Court.

Held, that the word "premises" in the Act was intentionally used by Parliament as the widest possible term, and that, though a cave which was open to the outside air the whole time might not come within the word "premises," the excavations in the present case, which had, by the insertion of the door, been turned, in effect, into a closed warehouse, clearly did. The appeal must, therefore, be dismissed.

Counsel: *Manningham-Buller, K.C.*, and *L. R. Miller* for the appellant; *E. H. P. Wrightson* for the respondents.

Solicitors: *W. G. Street & Co.*; *W. H. House & Sons*, Sevenoaks.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* HACKNEY, ISLINGTON AND STOKE NEWINGTON RENT TRIBUNAL; *Ex parte* KEATS

May 11, 1950

Rent Control—Rent tribunal—Jurisdiction—Written agreement of tenancy—Premises to be used for tailoring only—View of tribunal that provision in lease a sham—Reduction of rent—Validity of order—Landlord and Tenant (Rent Control) Act, 1949 (12 *and* 13 *Geo.* 6, *c.* 40), *s.* 1.

APPLICATION for order of *certiorari*.

By an agreement in writing dated December 17, 1949, one Yetta Keats, the landlady of certain premises consisting of the first floor of 127, Southgate Road, N.1, granted a tenancy of the premises, which had previously been used as a dwelling-house, for a term of one year beginning on that date to one Sheldon, at an annual rent of £169. Under the agreement the respondent agreed to use the premises for the purpose of tailoring only. The agreement contained the following declaration: "It is hereby declared that no warranty is given in the granting of this agreement that the premises will not attract a development charge or require permission under any statutory instrument. The landlord will in no circumstances indemnify the tenant against any charges, actions or proceedings directly or indirectly arising out of statutory instruments." The respondent applied to the tribunal to determine the reasonable rent of the premises. The landlady's solicitors communicated with the tribunal and contended that it had no jurisdiction to deal with the application, and at the hearing counsel for the landlady took the same point. The tribunal, while accepting the principle that extrinsic evidence could not be given to vary a written agreement, formed the view that the provision in the lease with regard to the user of the premises was a sham and made a determination reducing the rent. The landlady applied for an order of *certiorari* to quash the determination of the tribunal as having been made without jurisdiction.

Held, that, as the Landlord and Tenant (Rent Control) Act, 1949, referred to dwelling-houses only, the tribunal had no jurisdiction to proceed unless and until the agreement was found to be a sham by a competent court and an order for rectification had been made. The order for *certiorari* must, therefore, issue.

Counsel: *Marshall, K.C.*, and *F. R. McQueen* for the applicant; *J. P. Ashworth* for the tribunal.

Solicitors: *J. C. Fox, Gamble & Son*; *the Solicitor, Ministry of Health*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

BURROWS *v.* HALL

May 11, 19, 1950

Road Traffic—Driving while uninsured—Disqualification—Disqualification limited to class of vehicles—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 6 (1), s. 35 (2).

CASE STATED by the Recorder of Rotherham.

At a court of summary jurisdiction at Rotherham an information was preferred by the prosecutor, Mr. Hall, chief constable of Rotherham, charging the defendant, Richard James Burrows, a lorry driver, with using a motor-car while uninsured against third-party risks, contrary to s. 35 (1) of the Road Traffic Act, 1930. The justices convicted the defendant, fined him £5, and disqualified him for holding or obtaining a driving licence for twelve months. The defendant appealed to quarter sessions, and the recorder dismissed the appeal, except that he limited the disqualification to the driving of private motor-cars. The prosecutor appealed to the Divisional Court, contending that the recorder had no power so to limit the disqualification. By s. 6 (1) (which is within Part I of the Act), ". . . if the court thinks fit, any disqualification imposed under this section may be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed." By s. 35 (2): ". . . a person disqualified by virtue of a conviction under this section . . . shall, for the purposes of Part I of this Act, be deemed to be disqualified by virtue of a conviction under the provisions of that Part."

Held, that it was the intention of the legislature that disqualification for an offence against Part II of the Act should be treated in all respects in the same way as disqualification imposed for offences against Part I, and that the recorder was, therefore, right in holding that he had the power to limit the disqualification in the way in which he did. The appeal must, therefore, be dismissed.

Counsel: *A. B. Boyle* for the appellant. The respondent did not appear.

Solicitors: *Hosking & Berkeley*, for *J. P. Crehan*, Rotherham.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PARKSTONE PRIMROSE LAUNDRY, LTD. *v.* POOLE CORPORATION

May 10, 1950

Private Street Works—Expenses—Apportionment—Premises deriving greater degree of benefit than others—Disregard of frontage—Private Street Works Act, 1892 (55 *and* 56 *Vict.*, *c.* 57), *s.* 10.

CASE STATED by the Recorder of Poole.

An apportionment of expenses under the Private Street Works Act, 1892, was made by Poole Corporation in respect of frontagers in King Street, Poole. An objection was filed by certain frontagers, Parkstone Primrose Laundry, Ltd., who were the occupiers of a laundry, but it was disallowed by a court of summary jurisdiction, and the company appealed against the decision. King Street was a road in which were a variety of houses. At one end were two houses on either side of the street, which had return frontages as well as frontages on to King Street. Along the street were terrace houses on one side, and, on the other, premises which were partly cottages, partly two blocks of small flats, and the laundry. It was not disputed that the laundry obtained a greater degree of benefit from the works than any of the other premises, and the surveyor estimated that it would get about eight times as much benefit as any other premises. Accordingly, he allotted a unit, or, in one case, the portion of a unit, to every house irrespective of the frontage occupied by the house, and to the laundry he allotted eight units. He found the value of the unit by taking the total number of units and dividing the expenses by that number of units. The recorder held that the method adopted was wrong in that the surveyor had ignored the varying frontages of the houses, and he allowed the appeal.

The corporation appealed to the Divisional Court.

By s. 10 of the Private Street Works Act, 1892: "In a provisional

apportionment of expenses of private street works the apportionment of expenses against the premises fronting, adjoining, or abutting on the street or part of a street in respect of which the expenses are to be incurred shall, unless the urban authority otherwise resolve, be apportioned according to the frontage of the respective premises; but the urban authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations; that is to say, (*a*) the greater or less degree of benefit to be derived by any premises from such works . . ."

Held, frontage was to be regarded as an overriding consideration in making the apportionment, and, as the surveyor had disregarded frontage, the recorder was right in holding that the apportionment was bad. The appeal must, therefore, be dismissed.

Counsel: *Rowe, K.C.*, and *Fay* for the corporation; *J. T. Molony* for the occupiers.

Solicitors: *Sharpe, Pritchard & Co.*, for *Wilson Kenyon*, town clerk, Poole; *Taylor, Jelf & Co.*, for *R. S. Hawkins*, Poole.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law).

(Before Lord Goddard, C.J., Humphreys and Parker, JJ.)

HOPPER *v.* STANSFIELD

May 17, 1950

Road Traffic—Driving while under influence of drink—Disqualification—Special reasons—Car stationary and engine incapable of starting when found by police—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 15 (2).

CASE STATED by Sussex justices.

At a court of summary jurisdiction an information was preferred by the appellant, Austin Hopper, a police officer, charging the respondent, Patience Mary Stansfield, with being in charge of a motor vehicle on a road when under the influence of drink to such an extent as to be incapable of having proper control of such vehicle, contrary to s. 15 (1) of the Road Traffic Act, 1930. A police constable found the respondent sitting in her car on a road without any lights on. At the time she was so much under the influence of drink as to be incapable of having proper control of the vehicle, and had driven, according to her own statement, six miles. The officer drew her attention to the fact that there were no lights on the car, whereupon she straightened herself on the driving seat and put out her hands towards the switch, but did not switch the lights on. She then put her hands on the steering wheel as if to move away, but the engine was not going and she made no attempt to start it with the starting button. The respondent then got out and went to the front of the car with the starting handle and tried to start the engine, but the battery was so low that she failed to start it. The justices convicted and fined the respondent, but refrained from imposing disqualification for holding a licence under s. 15 (2) on the ground that they found special reasons to exist. The special reasons were stated by them to be "the facts that [the car] was stationary when found by the police officer and its engine was incapable of being started, because of the condition of the battery". The police officer appealed, contending that no special reasons existed.

Held, that the reasons given by the justices could not constitute special reasons for failing to disqualify, and that the case must be remitted to them with a direction to impose disqualification.

Counsel: *Anthony Harmsworth* for the appellant; *E. H. P. Wrightson* for the respondent.

Solicitors: *Walmsley & Stansbury*, for *J. E. Dell & Loader*, Shoreham-by-Sea; *Philip Conway, Thomas & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

ROGERSON *v.* STEPHENS

May 17, 1950

Road Traffic—Driving while uninsured—Use of motor vehicle and trailer charged—Objection to form of charge—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 35 (1).

CASE STATED by Cambridge borough justices.

At a court of summary jurisdiction at Cambridge an information was preferred by the appellant, Christopher Herbert Rogerson, a police officer, charging the respondent, Arthur Gordon Stephens, with using a motor vehicle and trailer on a road without having in force a policy of insurance of security in respect of third party risks, contrary to s. 35 (1) of the Road Traffic Act, 1930. Objection was taken on behalf of the respondent that the charge as laid was bad in that (*a*) there was no offence known to the law of using a motor vehicle and trailer in the manner charged; (*b*) the motor vehicle and trailer did not together form a single entity; and (*c*) the law did not require a policy of insurance in respect of a trailer. The justices overruled the objection and proceeded to hear the information, and in the result dismissed it. The police officer appealed.

Held, that the justices were wrong in overruling the objection, as the information disclosed an offence not known to the law. They should have indicated that they were prepared to amend the information, if asked to do so by the prosecution, by striking out the words "and trailer." The determination of the justices to dismiss the information was right, but for reasons different from those which they gave, and the appeal would, accordingly, be dismissed.

Counsel: *Malcolm J. Morris* for the appellant. The respondent did not appear.

Solicitors: *Blyth, Dutton, Wright & Bennett*, for *King, Metters & Harrison*, Cambridge.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

RELATIONSHIP BETWEEN LOCAL AUTHORITIES AND VOLUNTARY ORGANIZATIONS

The East Midlands Branch of the Local Government Legal Society held their quarterly meeting recently at the Guildhall, Nottingham. Professor Arthur Radford, head of the Department of Social Administration at Nottingham University, addressed the meeting on the relationship between local authorities and voluntary bodies. Professor Radford stated that the development of the social service state was one of the features of the first half of the twentieth century, and it was apparent that the state is to become the principal channel through which social service is to be administered in the future. To some it seemed that the death knell of voluntary service had been sounded and there were those who regarded "voluntaryism" as a survival of the relationship between privileged and underprivileged which ought to disappear. This, however, was too rigid an interpretation of what was happening at the present time. In fact, said Professor Radford, voluntary services are still widely active and the importance of their place in society has found recognition in the recent social legislation which has sometimes prescribed consultation with voluntary bodies and often has authorized the carrying out of local authorities' functions through their media. The bulk of voluntary bodies are willing to co-operate with local authorities and other statutory bodies and the right relationship is the one in which they do, in fact, co-operate. He thought social services will always be carried out by statutory in conjunction with voluntary bodies: both have their respective functions in the sphere of social service and are complementary. The state, in its wide sense, cannot be regarded as the only mechanism which can be employed, for not only was it desirable that voluntary effort should have a place in the sphere of social service but the private individual should be regarded as having a duty to render social service. The political philosophy behind this is that democracy is self-government. Professor Radford observed that one of the characteristics of the state *vis-a-vis* voluntary bodies is its power to raise funds by taxation. In general, the state acts on behalf of the whole community on matters on which the community has made up its mind; but society has not made up its mind on all issues. A need will not be seen by all people at the same time; it will be seen only by those who are able to see it, so that individual persons acting as such or in groups must be willing to handle needs for which the state has not provided. Therefore the state should be interested in fostering voluntary action and voluntary bodies should be interested in fostering state action. New social services, said Professor Radford, will in the future, as in the past, be started by voluntary effort. In particular in the experimental field of social service the place of voluntary bodies is of great importance and this fact has recently been recognized by the state in the case of rehabilitation centres for mothers and children (such as Brentwood House) where the state has with deliberation left the experimental work to voluntary effort.

In case work the theory is that the individual is unique. He cannot be "categorized." In this sphere the state is in difficulties. There is no room for the categories, scales of assessment and formulae which the state properly uses in an endeavour to deal justly with individual needs, for particular case needs cannot be defined beforehand. It is in this sphere also that voluntary bodies able to take into account the merits of individual cases will continue to exercise a function of social importance to the public benefit.

In the discussion which followed Professor Radford's address it was apparent that members were in agreement with the view that efficient social service depended upon proper co-operation between local authorities and other statutory bodies on the one hand and

voluntary bodies on the other. A practical question arose in cases where a local authority made substantial contributions to a voluntary organization with a view to the latter carrying out functions on behalf of the local authority, whether the local authority should appoint representatives as members of the governing body of the voluntary organization or alternatively co-opt members of the voluntary organization on the appropriate committee of the authority. Most members were of opinion that co-option of non-elected members on local authorities' committees had proved itself undesirable in general. Professor Radford expressed the view, however, that in local government there was room not only for the "elected" and "appointed" but also for the "selected." Co-opted members might often contribute valuable advice which would not otherwise be available.

It was arranged that the next meeting of the Branch should be held at Cleethorpes on Saturday, June 17.

INSTITUTE OF SHOPS ACTS ADMINISTRATION: ANNUAL CONFERENCE, 1950

The forthcoming conference of the Institute, which is being held at Scarborough on September 26 to 28 next will include a number of interesting papers concerning the legal and administrative aspects of the Shops Acts, 1912-1938. The speakers will include Mr. G. Graham Don, J.P., M.R.S.I., Barrister-at-Law, of the London School of Hygiene and Tropical Medicine, and Mr. E. J. Cope-Brown, town clerk, Ealing corporation.

THE REGISTER OF PATENT AGENTS RULES, 1950

These rules have just been made under the Patents Act, 1949, to replace similar rules which were made in 1932 under the earlier Patents Acts. They regulate the registration of qualified patent agents and provide for the maintenance of the register by the Chartered Institute of Patent Agents. Admission to the register is normally by way of examinations conducted by the Chartered Institute. The new rules, however, provide an alternative temporary procedure for admission for certain persons who have been acting as agents in applying for patents for their employers and who may be stopped from so acting under the Patents Act, 1949, unless they are registered.

VICTIMS OF NAZI GERMANY: EXTENSION OF TIME FOR CLAIMS FOR COMPENSATION IN U.S. ZONE

Under the General Claims Laws passed by the German authorities in the United States Zone of Germany non-residents of Germany have a right to submit claims for compensation for personal damage and loss of liberty inflicted on them by the former Nazi Government.

The German authorities concerned have now notified the U.S. High Commissioner that the period in which such claims can be filed has been extended to June 30, 1950. (It originally expired on March 31.)

Claimants, or their advisers, should communicate direct with the appropriate address given below and are advised to submit sufficient identity and supporting information with their claims, including name, date of birth, present residence and kind of damage for which redress is sought. Claims for restitution of identifiable property cannot be considered under these laws.

The areas in which claims can at present be entertained and the addresses to which claims should be made direct are:—Bavaria: Bayrisches Landesentschaedigungsamt arcisstrasse 11, Munich 2; Hesse: Hessisches Staatsministerium, der Minister des Innern Abteilung Wiedergutmachung Wilhemstrasse 24, Wiesbaden; Wuerttemberg: Landesbezirkstelle fuer Wiedergutmachung Gerokstrasse 37, Stuttgart; Baden: Landesbezirkstoll fuer Wiedergutmachung Leopolstrasse 7a, Karlsruhe; and Bremen: Amt fuer Wiedergutmachung Polizeihaus, Bremen.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CONTINUITY OF READERSHIP

In reply to your note on p. 226, my firm has the "J.P." in its possession from No. 1, *i.e.*, 1837. My father, the late W. Osborn Boyes, LL.D., purchased the practice in 1881 from a gentleman who presumably commenced to form the series.

Yours faithfully,
W. ARCHIBALD BOYES.

Boyes & Wright,
Solicitors,
20, Wood Street,
Barnet, Herts.

The Editor,
Justice of the Peace and
Local Government Review

DEAR SIR,

CONTINUITY OF READERSHIP

We were interested to see Mr. Sandford's letter at p. 226 *ante*.

Shropshire seems to have been well canvassed when your Journal was founded because this firm, then styled J. Loxdale Warren, has taken the J.P. since its commencement, and we have in fact the bound volumes continuously from No. 7 onwards.

Yours faithfully,
WARREN, UPTON & GARSIDE.

Market Drayton.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CONTINUITY OF READERSHIP

With reference to your footnote at p. 226 *ante*, my grandfather started practising in 1835. We have all the issues of the "Justice of the Peace" on our bookshelves.

Yours faithfully,
H. O. LOCK.

Lock, Reed & Lock,
Solicitors,
53, High Street West,
Dorchester, Dorset.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CONTINUITY OF READERSHIP

With reference to your editorial footnote to Mr. R. Sandford's letter at p. 226 *ante*, we write to say that we have a complete copy of the *Justice of the Peace* from the year 1837 and all except the first two volumes have the name of Mr. William Inman Welsh, the founder of our present firm. Over the first two numbers the name would appear to be Brookes, of whom we have no knowledge, but Mr. Welsh's name and crest are pasted over the name of Brookes. We thought this might be of interest to you.

Yours faithfully,
CHUBB, BERESFORD & WYATT.

Wells, Somerset.

[We are greatly obliged. If there are any other subscribers' firms who can trace having taken the "J.P." from 1837, we would be most interested to hear from them.—*Ed. J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

ELECTION CALENDAR

Referring to the election calendar on pp. 180-184 of the *J.P. & L.G.R.* (April 8) I find that in col. 3 of serial 10 it is stated that the candidate's declaration as to election agent is to be made to the returning officer. Should not "returning officer" read "clerk of the authority"? Section 55 (6) (*b*) of the Representation of the People Act, 1949, provides that the clerk of the authority shall be the appropriate officer for this purpose in local government elections in England or Wales, the returning officer being the appropriate officer only for parliamentary elections. You will appreciate, I am sure, that I bring this matter to your notice in a spirit of helpfulness and in the interests of securing complete accuracy of future editions of this excellent calendar.

Yours faithfully,
L. A. VENABLES,
Town Clerk.

Town Clerk's Office,
Colne,
Lancashire.

REVIEWS

The Rent Acts. Fifth Edition. By R. E. Megarry. London : Stevens & Sons, Ltd. Price 30s.

In reviewing earlier editions of this book, which may now be regarded as a standard work, we have said that it is one of the most readable and complete upon its subject. Where there are several textbooks upon a comparatively narrow topic such as the Rent Restrictions Acts, the practitioner must have his own preference, which will usually be based upon experience of rival works. Our own experience has indicated that Mr. Megarry's method of dealing with the Acts is reliable and thorough. In the preface to the present edition he mentions that it is not recorded that one of the tasks assigned to Hercules was that of annually re-writing a substantial part of a book upon this subject, but the combined operations of Parliament and the Courts have made another edition necessary. The Landlord and Tenant (Rent Control) Act, 1949, which has been passed since the fourth edition, had to be worked in, while there are some 200 new decisions of the courts. These and other causes have lengthened the book by about 150 pages, and various passages have been re-written and subdivided, so as to avoid blurring the outlines. The opportunity of reprinting has been taken to add the name of the judge in all quotations from judgments. This edition, like the fourth, is dated Guy Fawkes Day, but in fact has been brought a little further up to date by additions to the proof sheets. Some day, perhaps, Parliament and a Government will pluck up courage to admit the quasi-permanence of this legislation, and consolidate the Acts. When this happens Mr. Megarry will no doubt produce the best, or one of the best, of the expositions of the consolidating legislation. Meantime the present handbook on the existing Acts will retain its place, and add to its author's reputation.

Voluntary Liquidation. By A. C. Hooper and J. S. Nixon. London: Gee & Company (Publishers), Ltd. Price 42s. net.

The second edition of this handbook was published just before the war ; this third edition was made necessary by the revision and consolidation of the statute law relating to companies, as well as by a number of new judgments. The learned authors are solicitors, with special knowledge of company business, and those concerned with voluntary liquidations will find here all they wish to know. Chapter I consists of the steps to be taken, set out in their proper order, for effecting a voluntary winding-up ; these are conveniently referenced to sections of the Act and the winding-up rules, as well as to chapters of the book itself. Each step is then taken and treated separately so far as necessary receiving, where it is a separate and self-contained matter, treatment in a chapter of its own. Related matters such as the appointment of a liquidator, and solicitors' costs, are also dealt with. After covering the subject in this way, which takes up about half the book, the learned authors set out extracts from the Act of 1948 and the Rules, and conclude with an index, which has the unusual feature of referring not merely to pages but also to chapters, which will enable the reader to form some idea of the number of headings under which a particular topic may arise. Though the subject is rather outside our own special field, we feel justified in saying that it is fully and reliably handled. We should have liked a larger number of alternative references for the decided cases, either in the text, where the learned authors seem always to have confined themselves to a single reference, or (if they had preferred it) in the table of cases at the beginning, where no references at all are made to the reports. We have no other adverse criticism and, so far as we can judge, the work is a worthy addition to the series of textbooks upon company law in which Messrs. Gee have specialized.

Learning the Law. By Glanville L. Williams. London : Stevens and Sons Ltd. Price 12s. 6d. net.

This is the third edition of a work prepared by Professor Glanville Williams for the guidance of law students. As he said in the preface to the first edition, it is not a textbook or likely to be prescribed in an examination syllabus. But in speaking of an earlier edition the *Law Journal* foretold that it would become the law student's *vade mecum*, while very few practitioners would not get profit and pleasure from its perusal. A good deal of what is said in it has been included as the result of errors committed by the novice, indeed in many cases (the learned author states) errors perpetrated not by one but by droves. Each chapter deals with a particular aspect of what the law student ought to know, from the rudimentary divisions of the law to general reading and to the various openings, not in actual practice alone, which are available to a student who has qualified in law. Opinions will naturally differ upon the expediency of entering, for example, local government or the civil service by way of studying law, but this is the first book we remember in which so many possible methods for getting out of private legal practice into salaried positions have been discussed. The price is perhaps a little high for the student's pocket, but if he feels disposed to spend so much he will find that he has his money's worth.

THE WEEK IN PARLIAMENT

By Our Parliamentary Correspondent

Before Parliament adjourned for the Whitsuntide Recess, the Attorney-General announced that on June 1 approximately 2,030 justices on the English and Welsh Commissions would be transferred from the active to the supplemental lists on account of age under the provisions of the Justices of the Peace Act, 1949. The figures for Scotland were not yet available.

He said that the Lord Chancellor had had in mind for some time the replacing of those justices and he had already arranged for new appointments to the Commissions to be made where required.

Mr. H. Hynd (Accrington) asked the Secretary of State for the Home Department why no date had yet been fixed for the operations of ss. 8 and 16, which relate to Travelling and Lodging Allowances, and Establishment of Magistrates' Courts Committees, of the Justices of the Peace Act, 1949.

The Secretary of State for the Home Department, Mr. Chuter Ede, replied that the provisions relating to the setting-up of magistrates' courts committees could not be introduced in isolation from the financial provisions of the Act, and in view of the present economic situation and the continuing need for strict economy, he could not say when it would be possible to bring into operation either those provisions or the section relating to travelling and lodging allowances for justices.

COURTS (EMERGENCY POWERS) ACT

The Attorney-General announced that the Government proposed to terminate the Courts (Emergency Powers) Act, 1943.

He said that for over two years no order had been made under that Act in the High Court. The opinion had been widely expressed in the legal profession for some time that the Act was no longer serving any useful purpose, and after careful consideration the Government had decided that that view was correct. Before a decision was reached in the matter, the Law Society were consulted and they agreed with the decision to bring the Act to an end, as did the Bar Council. An Order in Council would be submitted to His Majesty for that purpose towards the end of June.

He added that the Liabilities (War-time) Adjustment Acts, 1941 and 1944, were dependent upon the existence of the Courts (Emergency Powers) Act and would automatically come to an end at the same time as that Act.

THE ADJOURNMENT

Parliament has now adjourned until June 13.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, May 23

MEDICAL BILL, read 3a.

Wednesday, May 24

LIBERTIES OF THE SUBJECT BILL, read 1a.

HOUSE OF COMMONS

Monday, May 22

MISCELLANEOUS FINANCIAL PROVISIONS BILL, read 1a.

Thursday, May 25

FOREIGN COMPENSATION BILL, read 3a.
HIGHWAYS (PROVISION OF CATTLE-GRIDS) BILL, read 3a.
COAL MINING (SUBSISTENCE) BILL, read 3a.
MAINTENANCE ORDERS BILL (LORDS), read 2a.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Assault—*Aggravated assault—By whom complaint to be made.*

Your opinion is requested as to whether a person can properly be charged by a police officer with assault and battery on a female contrary to s. 43 of the Offences against the Person Act, 1861, or whether that section without creating a separate offence merely provides for a heavier sentence in proceedings brought under s. 42. The latter view appears to be supported by the case of *Crocker* v. *Raymond* (1886) 3 T.L.R. 181, quoted in *Stone* at p. 525. On the other hand s. 44 refers to a complaint preferred "under either of the last two preceding sections," *i.e.*, ss. 42 and 43, and the first schedule of the Children and Young Persons Act, 1933, also refers to offences under s. 43 of the Act of 1861. SYA.

Answer.

The wording of s. 43 seems to suggest that complaint may be made by someone other than the person assaulted, but this view is difficult to reconcile with the case cited, and we think it is not proper for the police to lay the information. The usual practice is to issue process for common assault under s. 42, and it is for the justices at the hearing, if they think proper, to adjudge the assault aggravated. It is unusual to grant process for aggravated assault, although the language of the sections leaves room for doubt as to the true position. We advise against complaint being made by the police instead of the person assaulted.

2.—Bankruptcy—*Distress for rates—Whether an act of bankruptcy.*

With reference to your answer to P.P. 2 at 114 J.P.N. 38, the case of *Re a Bankruptcy Petition, ex parte Caucasian Trading Company* (1896) 74 L.T. 47 seems to offer some assistance. In that case goods had been sold under a writ of *fieri facias* issued on a summons taken out to enforce an arbitration award. The award itself gave no right to issue the writ, and in order to determine whether execution had been levied against the debtor's goods within the meaning of s. 1 of the Bankruptcy Act, 1890 (replaced by s. 1 (*e*) of the Bankruptcy Act, 1914), the true question, according to Lord Esher, M.R., to be asked was "Under what authority were the goods sold"? Applying that question to the facts propounded in the query, the answer must surely be the common law right, as amended by statute, of the landlord to distrain. It is true that, at present, it is necessary to get leave of the court under the Courts (Emergency Powers) Act, 1943, s. 1 (2), to distrain, but that is merely obtaining leave to enforce an existing right not as in the case above obtaining a right which did not previously exist. In this connexion it may be noted that the refusal of the court to grant leave does not have the effect of extinguishing the debt or obligation, but merely suspends the effective means of enforcing it: *Southgate Corporation* v. *Watson* [1944] 1 All E.R. 603; 108 J.P. 207. It therefore appears that a distress for rent is not within the meaning of the section. AMU.

Answer.

We are obliged to our learned correspondent for this reference. In the case he cites, the court held that execution on a *fieri facias* took place under process in a civil proceeding in the High Court, and so there was an act of bankruptcy, notwithstanding that the civil proceeding in question was not of the same kind and nature as an action, which the section mentioned just before the words "civil proceeding." But the judgments show plainly that, to fall within what is now para. (*e*), the "process" must be in an action in any court or in a civil proceeding in the High Court, which distress for rates is not, as well as not being an execution, as we said in our earlier answer.

3.—Cinematograph Act—*Licensed premises in control of Hospitals Board—Whether fee chargeable for licence.*

Prior to the National Health Act, 1946, a mental hospital in this area applied annually for a licence under the above Act and paid the prescribed fee. This year the person in whose name the licence is held has stated that it is desired to renew the licence but as the hospital is now transferred to the Minister of Health under the 1946 Act, he is of the opinion that no fees are payable. He is unable to give me any authority for this opinion other than that the hospital is now Crown property.

Is there any substance in this argument and if so what is the authority? NIC.

Answer.

The officer of the hospitals board has not understood the legal position correctly. It is not that transfer of the hospital to the Minister of Health excuses a licensee from the statutory fee, but that no licence under the Cinematograph Act, 1909, is needed, or can properly be granted. That Act does not bind the Crown; the hospital is by the National Health Service Act, 1946, vested in the Minister who is not only a trustee for the Crown by virtue of s. 7 of the Ministry of Health Act, 1919, but is by the Act of 1946 in effective control of the hospital. In practice, the Home Secretary's safety regulations under the Act of 1909 are, we believe, still complied with by boards of governors and hospital boards, as obviously they ought to be, but those regulations, and the obligation to be licensed are, as a matter of law, no longer applicable.

4.—Hackney Carriages—*Refusal of licence—Appeal to courts.*

I beg to refer to the three articles appearing in your journal for 1949, entitled "Hackney carriages, especially provincial," in particular to pp. 724-726, and to the fact that in the course of this article reference is made to the right of appeal against the refusal to grant a proprietor's or hackney driver's licence. Would you please inform me of the Act or regulations under which the right of appeal is given, as I can find no reference under the Town Police Clauses Act, 1847, or kindred Acts in this connexion. ACEP.

Answer.

The provisions with respect to hackney carriages in the Act of 1847 are in boroughs and urban districts incorporated with the Public Health Act, 1875, by s. 171 thereof, which by order under s. 276 can be put in force also in a rural district. The Act of 1875 and the Public Health Acts Amendment Act, 1890, are by s. 2 (1) of the latter to be construed as one, and by s. 2 (2) Part I of the Act of 1890 is in force in all boroughs and urban and rural districts. Section 7, which occurs in Part I, gives a right of appeal to any person aggrieved by, *inter alia*, the withholding of any licence by a local authority. This chain of reasoning, which is plain enough on the Acts themselves, was confirmed by the High Court in *R.* v. *Essex JJ., ex parte Barking U.D.C.* (1916) 80 J.P. 345.

5.—Landlord and Tenant—*Surrender by unsealed instrument of parol lease—Surrender acted on by landlord—Claim by tenant's wife to hold over.*

Application has been made under s. 1 of the Small Tenements Recovery Act, 1838, for recovery of possession of a tenement consisting of dwelling-house, outbuildings, garden and land extending to three and a half acres which was held on a yearly tenancy at a rent of £15 per year. It was admitted and agreed that the tenancy was governed by the Agricultural Holdings Acts and not the Rent Restrictions Acts. The tenancy was a verbal one entered into in 1938 between the owners and A. In March, 1946, A had a dispute with his wife as a result of which he left the premises, leaving behind some of his furniture and personal possessions. His wife remained in possession and continued to pay the rent and has done so up to the present time. In evidence, A said he saw the owners in 1947 and informed them that he was no longer living with his wife, and that if his wife wanted to stay there she would have to pay the rent and in June, 1949, he told them that he wanted to give up the tenancy. An agreement in writing, stamped 10*s.*, was entered into between the owners and A under which A agreed to surrender the property on September 29, 1949, and to pay the rent due up to that date. Mrs. A stated that after her husband left she saw the owners and said she was desirous of becoming the tenant and they told her to carry on for the time being and that they would call upon her at a later date. They have not done so, but did not deny the statement made by Mrs. A. The rent, including the half year due on September 29, 1949, has been paid in the usual way and she has received a receipt in the rent book in which her husband's name is given as tenant. The solicitor for the applicant alleges that the wife was a trespasser, and he had served upon her notice of intention to apply under the Small Tenements Recovery Act, 1838.

He contends (1) that A was the tenant; (2) That the tenancy was duly determined by the agreement to surrender dated July 12, 1949; (3) That his proceedings are properly brought under s. 1 of the Small Tenements Recovery Act, 1838.

On behalf of Mrs. A it was contended (1) That the Small Tenements Recovery Act is not applicable, as the relationship of landlord and tenant did not exist between the owners and Mrs. A; (2) That A held under a lease from year to year under the Agricultural Holding Acts, and that his tenancy could only be surrendered by deed and not by agreement: Law of Property Act, 1925, s. 52; (3) That in any event A could not determine the tenancy if he left behind furniture and his personal possessions, and did not give possession; (4) That if the surrender should be held to be valid, it could not affect the rights of Mrs. A as third-party; (5) That Mrs. A is in the matrimonial home and that A has never revoked his permission for her to live

there ; (6) That the only intimation Mrs. A has ever had of any ejectment proceedings has been the notice of intention to apply under the Small Tenements Recovery Act.

The following authorities were cited :—*Old Gate Estates, Ltd.* v. *Alexander* [1949] 2 All E.R. 822 ; *Addis Price* v. *Lewis* (1948) L.J.N. 430. Your opinion is sought as to the justices' power to issue a warrant for possession. ASTR.

Answer.

Mrs. A's first contention fails because the Act of 1838 expressly provides for ejecting a person other than the ex-tenant, if that person holds over after the tenancy has ended. This also disposes of her sixth contention, if the notice of intention was regular. Her third contention is supported by several passages in *Old Gate Estates, Ltd.* v. *Alexander*, *supra*, but we do not regard it as conclusive—a person can abandon his furniture if he pleases, and the relevance of the fact is to his intention. The query is not quite clear about the rent due in September, 1949, but Mrs. A is not, it seems, claiming to have been herself accepted as tenant, or to have paid rent otherwise than as her husband's agent, so that her " rights as third party " (fourth contention) can only be the right of a wife (fifth contention) to remain in the matrimonial home. The high-water mark of this right was in *Brown* v. *Draper* [1944] 1 All E.R. 246 which was followed in *Old Gate Estates, Ltd.* v. *Alexander*, *supra*. In *Taylor* v. *McHale* [1948] E.G.D. 299 the decision went the other way, upon the ground that the husband had shown a plain intention to put an end to his wife's representative status. In that case the husband was joined as a party (*secus*, *Brown* v. *Draper*) but we do not think this can be essential in a case under the Small Tenements Recovery Act, 1838. The *ratio decidendi* in *Brown* v. *Draper* and *Old Gate Estates, Ltd.* v. *Alexander* seems to have been the special language and purpose of the Rent Restrictions Acts : *see* the passages in quotation marks at [1949] 2 All E.R. 824. Neither the procedural point which the M.R. there stresses, nor the purpose stressed in the second passage, applies under the Agricultural Holdings Acts ; on the contrary, to allow the wife of an ex-tenant (if the man here be ex-tenant) to hold over would defeat the whole object. There remains therefore only Mrs. A's second contention, *viz.*, that the husband's surrender was inoperative ; that therefore the tenancy is not at an end, and that proceedings under the Act of 1838 are misconceived. Upon this, the county court cases of *Addis Price* v. *Lewis*, *supra*, and *Gloucestershire County Council* v. *Barnes* (1948) L.J.N. 136 were decided on the ground that s. 52 of the Law of Property Act, 1925, renders void in law a surrender by unsealed writing of a tenancy from year to year created by parol, and in *Addis Price* v. *Lewis* the judge refused leave to amend the pleadings so as to argue the effect in equity. However this may be, it seems from *Phené* v. *Popplewell* (1862) 12 C.B.N.S. 334 that unequivocal acts on both sides may bring an intended and agreed surrender within the words " surrender by operation of law " in s. 52 (2) (c) of the Act of 1925. In the case before us, the stamped agreement followed by the statutory notice to Mrs. A seem to us to be enough to bring this principle into play. We find nothing to preclude this in the Agricultural Holdings Act, 1923, now the Act of 1948. In our opinion, therefore, the landlord is entitled to his order under the Act of 1838. We have also considered *Middleton* v. *Baldock* (1950) W.N. 144 (wrongly indexed as p. 126), another case decided in favour of a wife who held over in the teeth of a surrender by the husband of his tenancy. It was again held that his written surrender did not deprive him of the status of a statutory tenant, who was in possession through an agent. But the case, like those *supra*, was decided expressly upon the Rent Restrictions Acts.

6.—Magistrates—*Practice and procedure—Examining justices—Submission of " no case "—Reply by prosecution.*

With reference to your answer to P.P. 6 at 114 J.P.N. 55, I should be glad to know whether in your opinion the prosecuting solicitor has a right of reply to a submission by the defending advocate to examining justices that no *prima facie* case has been made out. I ask this because my experience is that some justices permit such reply while others do not. SED.

Answer.

The question of speeches generally is dealt with in s. 12 of the Criminal Justice Act, 1925, as amended by the 9th schedule to the Criminal Justice Act, 1948, but the section does not specifically deal with this point.

We dealt with the point in an article at 90 J.P.N. 209 and in a question and answer at 90 J.P.N. 290. In our opinion, the defendant or his counsel or solicitors is entitled to make a submission of no case at the close of the case for the prosecution. We think the prosecution has no right of reply, unless a point of law is involved, in which case it is customary and proper to allow the prosecution to reply. Even where no point of law is involved, it may be quite reasonable to invite the prosecution to reply.

As stated in the article cited, the existing practice does not rest on statutory authority, but rather on a long continued custom of conceding a right of reply upon any point of law.

7.—Public Health Act, 1936—*Building plan—Approval with condition—Fresh plan submitted.*

My council approved a plan subject to the following recommendation of the area planning officer :—

To the houses being drained into the council's sewer and also to the houses being occupied by persons employed in agriculture. Will you please inform me whether my council would be correct in considering a new application, *i.e.*, plan showing drainage to a septic tank, and making a decision whilst this resolution remains on the minute book, or will it be necessary to rescind the resolution before considering the application ? APEH.

Answer.

There is no need to rescind the resolution. The resolution related to the application then before the council. The applicant is entitled to lay fresh proposals before them, relating to the same property, and those fresh proposals will be correctly dealt with by a new resolution.

Taking this view upon the point of procedure, we are not called upon to say anything definite about the existing resolution, but we ought perhaps to remark that upon the information given it strikes us as of dubious validity.

8.—Road Traffic Acts—*Steering a towed motor vehicle whilst under influence of drink—What is the correct charge ?*

Will you kindly let me know which is the appropriate Act and section under which to charge a person found under the influence of drink, or drunk, whilst steering a motor vehicle which is being towed by another motor car on a public road. Please cite any relevant cases in support of your answer.

I cannot see how he could be charged under s. 15 of the Road Traffic Act, 1930, and I can only think that the charge would be under the Licensing Act. JON.

Answer.

Wallace v. *Major* [1946] 2 All E.R. 87 held that the steersman of a towed motor vehicle is not driving it. It also held, however, that the towed vehicle, although for the time being a trailer, remains a motor vehicle.

We think, therefore, that the proper charge is that under s. 15 of the 1930 Act of " being in charge of a motor vehicle on a road whilst under the influence of drink to such an extent as to be incapable of having proper control of the vehicle." The steersman is, in our view, undoubtedly in charge of the towed vehicle, and must exercise adequate control over it in order that it may safely be towed.

9.—Town and Country Planning—*Development—Change of use—Garden of dwelling used for trade.*

Our parish council recently discussed a motion concerning the objectionable development of a number of properties within the parish. Apparently, certain modern dwellings are being used by their occupants as residences from which business is conducted to the detriment of the rural aspect. For example : A garages and repairs, in his back garden, the five six-ton lorries of his haulage business ; B stacks piles of animal food at the rear of his dwelling and conducts a business in the retailing and delivery of these commodities ; C uses his private garage as a motor-cycle and car repair depot. None exhibit notices, name plates, or advertisements, to indicate their calling. Trade is transacted on a Sunday, and the most aggrieved parishioners are those in the vicinity of such properties who implicitly observe the covenant in their own title deeds not to use their domicile as a place of business.

(*a*) To which body can the council direct their concern in regard to the deterioration in the rural-residential environment of the parish ?

(*b*) Under what Acts can any action be taken by either the rural or county authorities to restrain the carrying-on of the trades which affect the residential amenities of the locality ? AOB.

Answer.

B and C look like a change of use, constituting development, for which permission from the planning authority was necessary. This, because what was formerly residential property, is being used for carrying on trade. A is more doubtful. No permission is needed for a householder to repair his car, or his business lorry, in his garden, or for the matter of that (in our opinion) five business lorries, if it only happens casually or occasionally—say there is a flood at his yard which adjoins the river, and he gets the lorries towed to his garden and sets them to rights there. But the position will be otherwise if he does it so habitually that the garden becomes in effect an annex to his business premises. This may be a change of use. It is essentially a question of fact. The parish council can inform the county council as planning authority, or the rural district council who may be exercising delegated powers.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

HAMPSHIRE COMBINED PROBATION AREA

Appointment of Full-time Female Probation Officer

APPLICATIONS are invited from persons who have had experience and training as Probation Officers for the appointment of a full-time Female Officer for the above area. Candidates must be not less than 23 nor more than 40 years of age (except in the case of serving officers).

The appointment and salary will be in accordance with the Probation Rules and the salary will be subject to superannuation deductions. The successful applicant will be required to provide a motor car for which an allowance will be paid in accordance with the County scale for the time being in force, and she will be required to act in the Gosport-Fareham-Droxford areas.

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three persons to whom reference may be made, should be submitted to the undersigned not later than June 15, 1950. Canvassing, either directly or indirectly, will be a disqualification.

G. A. WHEATLEY,
Clerk to the Probation Committee.

The Castle,
Winchester.
May 26, 1950.

COUNTY OF SALOP

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor on the permanent staff at a salary of £685 × £25—£760. The appointment will be determinable by three months' notice and will be subject to medical examination and to the provisions of the Local Government Superannuation Act, 1937. Local government experience, preferably with a county council, is desirable. Applications (no form issued) giving age, date of admission, particulars of education, previous experience, and date on which applicant would be able to take up the appointment, together with names of three referees, must reach the undersigned not later than June 17, 1950. Canvassing will disqualify.

G. C. GODBER,
Clerk of the Peace and of the County Council.

Shirehall,
Shrewsbury.

HAMPSHIRE COMBINED PROBATION AREA

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited from persons who have had experience and training as Probation Officers for the appointment of a full-time Male Officer for the above area. Candidates must be not less than 23 nor more than 40 years of age (except in the case of serving officers).

The appointment and salary will be in accordance with the Probation Rules and the salary will be subject to superannuation deductions. The successful applicant will be required to provide a motor car for which an allowance will be paid in accordance with the County scale for the time being in force, and he will be required to act in the Winchester area and to assist in the liaison work of the Higher Courts.

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three presons to whom reference may be made, should be submitted to the undersigned not later than June 24, 1950. Canvassing, either directly or indirectly, will be a disqualification.

G. A. WHEATLEY,
Clerk to the Probation Committee.

The Castle,
Winchester.
May 26, 1950.

CITY OF BIRMINGHAM

Legal and Conveyancing Clerk

APPLICATIONS are invited from experienced Solicitors' Clerks (unadmitted) for the appointment of Legal and Conveyancing Clerk in the Town Clerk's Office at a salary in accordance with A.P.T. Grade VI (£595—£660 per annum).

The appointment will be subject to medical examination and to the provisions of the Local Government Superannuation Act, 1937.

Applications, stating age, present appointment and salary and full particulars of experience, with copies of not more than three testimonials, endorsed "Legal and Conveyancing Clerk," must reach me not later than June 17, 1950.

Canvassing is a disqualification.

J. F. GREGG,
Town Clerk.

The Council House,
Birmingham.
June 1, 1950.

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